

Volume 17

Pages 2310 - 2441

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE WILLIAM H. ORRICK

IN RE KOREAN RAMEN ANTRITRUST) No. C 13-4115 WHO
LITIGATION,)
) San Francisco, California
) Monday
) December 10, 2018
) 7:30 a.m.

TRANSCRIPT OF JURY TRIAL PROCEEDINGS

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Monday - December 10, 2018

7:31 a.m.

P R O C E E D I N G S

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(The following proceedings were held in open court, outside the presence of the jury:)

THE COURT: All right. A few things. Picking up where we left off on Friday afternoon regarding Mr. Ku, with foundation it seems to me that he's certainly able to testify that he understands that market leaders always meet with the government prior to price increase. He understands that that practice within the ramen industry has always been not to increase price until the market leader does, and not to exceed the market leader's increase. He can testify with foundation that he suspects it would be a problem with the government if prices were raised without approval.

Using the term "price control" doesn't work for me, Mr. Edelman, I think you were the person who introduced that on Friday afternoon. He talked about price regulation. So with foundation, he can talk about those other things, but he just can't say what he doesn't know. And he's never had a conversation with the government, and there's no regulations and there are no statutes about this. So I think you have to cabin that. But within those parameters, he can testify about that.

MR. EDELMAN: Okay. And, Your Honor, if it's helpful

1 to --

2 **THE COURT:** Wherever you want to be.

3 **MR. EDELMAN:** I'll be on this side today. If it's
4 helpful to Your Honor, as we were thinking about this over the
5 weekend, we were reminded of an inquiry that actually did come
6 to Mr. Ku from the same department within the government, the
7 Ministry of Food, Agriculture, Forestry and Fisheries, in 2007.
8 And it really is an example of the government's important role
9 in this area.

10 They inquired of Ottogi whether it intended to decrease
11 its prices in 2007 because there had been a drop, from the
12 government's perception, in the price of flour. And so there's
13 an email that shows his direct involvement in that topic when
14 it came up in 2007, which really is another example of
15 government intervention, regulation, price control.

16 And by the way, it's my understanding that regulation and
17 price control stem from the same root word in Korean. And
18 you're quite right that I had asked about -- he had responded
19 about regulation, and I had asked about price control, which --
20 in the translations, when I've spoken with him in the past,
21 that's how it's come back to me. But it wasn't intended to be
22 different than regulation.

23 But I just wanted -- if this is of interest to you -- to
24 show his involvement in interfacing with the government on the
25 subject of price control.

1 **THE COURT:** Foundation is of interest to me.

2 **MR. EDELMAN:** Sure. Would you like to see this?

3 **THE COURT:** Sure.

4 **MR. EDELMAN:** Okay. This is -- I'm going to hand the
5 Court a document that's been marked for identification Exhibit
6 796. And what you see here, Your Honor, English and the
7 Korean, but what you see here towards the bottom of the first
8 page is Mr. Ku writing to Mr. Yoo at Ottogi Ramen saying that
9 just earlier the Ministry of Food, Agriculture, Forestry and
10 Fisheries of each ramen company -- called each company to ask
11 if there were any plans to decrease the prices as the flour
12 price dropped recently. And so he's inquiring of Ottogi Ramen
13 what their plans are with respect to that.

14 **THE COURT:** Okay. Ms. Sweeney.

15 **MS. SWEENEY:** And we'll object to this document, Your
16 Honor, as it's both hearsay and because of relevance. It's
17 after the last price increase by Ottogi that's relevant to the
18 issues in this case.

19 **THE COURT:** Well, I think it's very -- it is relevant
20 to his perspective with respect to the government's
21 involvement, which is the -- was of interest to me on Friday
22 and is part of your objection.

23 So I'm -- I would be inclined to overrule your objection.

24 All right.

25 **MR. EDELMAN:** So I will just not use the word "price

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1 control," which I understand Your Honor would like me not to
2 do. But in terms of general foundation of his perception --

3 **THE COURT:** Yes, but it's got to be based on
4 something. You have to lay the foundation for his -- where
5 this perception of his comes from. So that's -- that will be
6 the thing that you need to do.

7 **MR. EDELMAN:** Okay. Thank you.

8 **THE COURT:** All right.

9 So I also received the defendants' proffer regarding the
10 KFTC and Korean Supreme Court. Thank you so much. But my
11 ruling remains and the proffer is in the record now.

12 With respect to the defendants' newspaper articles, I
13 agree with the plaintiffs, this is too late. These articles
14 weren't on the exhibit list. I think there's prejudice to the
15 plaintiffs. Also, I would end up having 403 concerns because
16 the issue is really what the plaintiffs should have known, and
17 the defendants didn't use them with the plaintiffs. So that's
18 my problem with them.

19 Mr. Perry, good morning.

20 **MR. PERRY:** Good morning, Your Honor. Mark Perry for
21 the Ottogi defendants.

22 I understand the ruling. I would just like to explore, if
23 I could, the ramifications of it. Because we have made a
24 no-evidence motion on 50(a) as to the third prong of the
25 fraudulent concealment doctrine; that is, diligence. That the

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1 plaintiffs had a trial and presented zero evidence of
2 diligence. They conceded that in their response. Instead,
3 they offered a futility exception to the diligence requirement.

4 There is no law that says there's a futility exception,
5 for obvious reasons. If there were futility exception, then
6 fraudulent concealment would just become the discovery rule.
7 If there were no reliance or diligence required by the
8 plaintiff, then we'd be in the world of the discovery rule; and
9 the Court has already ruled that we're not.

10 So as a matter of law, there is no futility exception.
11 But as a matter of fact, the plaintiffs made a representation
12 to this Court that no amount of internet research would have
13 turned up these facts. And that's false. We know it's false.
14 We know it's false from these articles, one of which was
15 submitted to the Court, and the Court wrote an opinion about it
16 earlier.

17 Certainly, the plaintiffs should not be permitted to argue
18 to the jury -- if this issue goes to the jury, and we submit it
19 should not for reasons already stated -- that no amount of
20 internet research would have turned up these facts because
21 that's not a true statement in the world. And if the evidence
22 doesn't come in, we understand that. But the evidence was
23 submitted in response to that statement that they made to this
24 Court.

25 We also think this is ultimately a question for the Court.

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1 This is an equitable exception that they invoked that they bear
2 the burden on and that they have failed to address. And we
3 think now, or some other time, we ought to have that discussion
4 as to whether the exception is even available in this case.

5 **THE COURT:** So when do you think -- if this is truly a
6 matter for me, which I was interested in seeing, if this is
7 truly a matter for me, when is it a matter for me? Is it a
8 matter for me that I need to decide before the case goes to the
9 jury? Is it something that I can consider after the jury's
10 come in in motions for new trials or judgments notwithstanding?
11 Tell me what you think I need to do.

12 **MR. PERRY:** So, Your Honor, as with any other
13 equitable tolling doctrine, we believe it is up to the Court's
14 discretion as to how to do that. The Court can decide it
15 before the jury goes in and decide it one way or the other.
16 The Court may submit it to the jury for an advisory verdict.
17 That's common in equitable determinations, as the Court is
18 aware. We understood that to be the proposal, and then
19 redecide it afterwards.

20 We think either way it should be decided on the trial
21 record. I mean, we've had a long trial here. There's no
22 reason on this or any other matter -- and we could talk about
23 alter ego, and some other things, injunction. We've a trial.
24 Right? We should have the decisions on that record.

25 We think, the defendants believe, on fraudulent

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1 concealment the Court should decide it now because they just
2 failed to prove that third prong. There's nothing to give to
3 the jury. There's nothing to decide.

4 Even if the Court were to stand on its summary judgment
5 ruling as to the first two prongs, the Court never looked at
6 the third, and there's no evidence on the third. Therefore,
7 the plaintiffs just didn't carry their burden. There's nothing
8 to submit to the jury. And the Court can decide that as a
9 matter of law, as a matter of Rule 50(a) law. In other words,
10 that the plaintiffs failed to carry their burden. And then you
11 don't have to decide, if you will, when to decide the ultimate
12 question.

13 If, on the other hand, the Court were to decide to weigh
14 the evidence, we would submit it would be efficient to do it in
15 either of the ways I just said. And it is really up -- we
16 think the Court has the discretion to do it either way.

17 **THE COURT:** All right. Mr. Dosker.

18 **MR. DOSKER:** Join. And we'll just add, I think, for
19 clarity and for -- clarity for what the jury's going to do in
20 its work, the sooner the better.

21 **MR. KINDALL:** Your Honor, Mark Kindall for the
22 indirect purchaser plaintiffs. Our perception on this is that
23 is we have no objection to Your Honor deciding the issue. We
24 think if you did, it would make sense to decide it before the
25 jury is instructed.

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1 And the reason there is simply that the jury has a lot of
2 issues that they need to resolve. If we could take this issue
3 off the table so that they could get a clean instruction on
4 what the damages period is; if there is a damages period. In
5 other words, if they decide liability, what is the period that
6 they should look at damages. That would make life a lot
7 simpler for them. It would make the instructions simpler. It
8 would make the verdict form simpler. There could be a lot of
9 good things that would flow from that.

10 So if Your Honor were inclined to decide this issue, from
11 plaintiffs' perspective it would be better if you did it now.

12 **THE COURT:** Mr. Albert.

13 **MR. ALBERT:** Mr. Kindall --

14 **THE COURT:** What he said? All right.

15 Thank you on that. And I have one more question for the
16 plaintiffs. I've been looking at the defendants' motion for
17 judgment, and this issue I will think about some more. I'm not
18 inclined otherwise to grant it except for with respect to alter
19 ego. And I'd like somebody to tell me -- either -- what the
20 plaintiffs' position is today with respect to the alter ego
21 theory; and if it is still that it's in the case, what I should
22 be looking at to make that determination.

23 **MR. KINDALL:** Your Honor, I think that the plaintiffs'
24 position on this is that the alter ego issue also is for the
25 Court and ultimately not for the jury. That it's also

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1 something that needn't be decided in advance of judgment in
2 this case. That the issue could arise in a scenario where if
3 there were a judgment for plaintiffs in this case, and we were
4 in a position where we had to -- well, a scenario where, for
5 example, there was liability for the Korean parents but not a
6 liability finding for the U.S. subsidiaries, the issue might
7 suddenly have salience if we were having issues with collection
8 down the road. And then the question would be whether there
9 was an issue with collection that was being caused as a result
10 of the close relations between the parent and the subsidiary
11 companies that were affecting the ability of assets that would
12 otherwise be findable in the United States.

13 **THE COURT:** Right, I remember hearing that. And but
14 then how would I -- that's, basically, asking me to defer
15 deciding alter ego for a couple years down the road until
16 you're enforcing judgment.

17 So is that what you're really asking? Should I just take
18 this -- should we take alter ego off the table completely at
19 this point?

20 **MR. KINDALL:** For the purpose of the trial, I think
21 that's correct.

22 **THE COURT:** Okay. Mr. Perry, you can't disagree with
23 that.

24 **MR. PERRY:** Well, Your Honor, we think it should be
25 taken off the table, period. I mean, we've had a trial.

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1 Remember, they fought like heck to get it into the trial over
2 our objection, the Court allowed it, put no restrictions on
3 their evidence. We've now had an entire trial --

4 **THE COURT:** I put some restrictions on it, Mr. Perry.
5 That's a little rough, I think.

6 **MR. PERRY:** There was no evidence on alter ego that
7 the plaintiff sought to introduce that the Court kept out of
8 the case. Let me put it that way. And there are nine factors,
9 as the Court is aware, under California law --

10 **THE COURT:** There's been very little evidence on alter
11 ego that's been put in one way or another.

12 **MR. PERRY:** Well, they bear the burden of proof. We
13 don't have to respond to it. Because when they got to the end
14 of their case in chief, they hadn't proved alter ego. And the
15 answer to that is the Court should render judgment on alter
16 ego.

17 They put it in as a claim. It is a separate, equitable
18 claim, a cause of action. They asked the Court to decide it.
19 We objected. The Court said they could try to prove it. They
20 failed to prove it. So it's not to be deferred to some future
21 judgment enforcement proceedings. They should just get --
22 lose. Right? That's what happens when you have a trial and
23 you fail to put in evidence. You lose.

24 And, you know, on the Rule 50 point, we put in a very
25 complete brief on that. They put in one footnote that says

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1 nothing, and essentially have conceded that they lose. So I
2 take Mr. Kindall's point that they want it out of the trial. I
3 understand why. Because they didn't prove it. But our view is
4 it should be dismissed with prejudice because they don't get
5 another chance.

6 **THE COURT:** Well, so the thing that I know that you
7 agree with is that it shouldn't go to the jury.

8 **MR. PERRY:** We absolutely agree with that, Your Honor.

9 **THE COURT:** That solves that particular problem.

10 All right. Is there anything else we need to take up
11 before 8:00?

12 (No response.)

13 **THE COURT:** All right. See you at 8.

14 (Recess taken at 7:47 a.m.)

15 (Proceedings resumed at 8:08 a.m.)

16 **MR. EDELMAN:** Your Honor, just a quick note if I
17 could.

18 **THE COURT:** Yes.

19 **MR. EDELMAN:** Ms. Sweeney just told me two seconds ago
20 she has objection to our summary exhibit, which I didn't know
21 about previously, in terms of inaccuracies that she believes
22 exist.

23 So I guess what I'll do is I'll try to postpone that so I
24 can talk to her about it on the break.

25 **THE COURT:** Okay.

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1 (The jury entering the courtroom.)

2 **THE COURT:** All right. Please be seated, everybody.
3 Good morning, ladies and gentlemen. Welcome. I hope you all
4 had good weekends.

5 And so now Mr. Ku is still on the witness stand.

6 Mr. Edelman, please proceed.

7 **MR. EDELMAN:** Thank you, Your Honor. Good morning,
8 Your Honor, ladies and gentlemen of the jury, and Mr. Ku.

9 **BANG-WAN KU,**
10 called as a witness for the Defendants, having been previously
11 duly sworn, testified further as follows:

12 **DIRECT EXAMINATION (Resumed)**

13 **BY MR. EDELMAN:**

14 **Q.** Mr. Ku, last week when we left off on Friday afternoon we
15 were talking about the factors that you consider in adjusting
16 prices. And you had talked to us about cost and market
17 conditions. Do you remember that?

18 **A.** Yes, I do recall.

19 **Q.** Okay. And I believe at least close to where we left off
20 you told us that Ottogi would wait to see what the number one
21 company did before deciding whether Ottogi was going to raise
22 its own prices in Korea.

23 **A.** Yes, that is correct.

24 **Q.** And who is the identity of that number one company that
25 you were referring to?

KU - DIRECT / EDELMAN

1 **A.** Yes. Nongshim was at number one.

2 **Q.** Okay. And why, based on your work in setting prices over
3 the years in the sales planning division, would you wait to see
4 what Nongshim did before deciding whether Ottogi would raise
5 its prices?

6 **A.** Nongshim at that time enjoyed 70 percent or more in terms
7 of market share, and we were at about 10 percent. Which meant
8 we were not even number two, but number three. But if we as
9 number three would go ahead and raise our prices, we feared we
10 might lose that 10 percent threshold.

11 **Q.** And were there any other reasons besides loss of
12 competitive positioning that entered into your thought process?

13 **A.** So my thinking at that time was that the government
14 required that any party go through its approval first that it
15 obtain the government's approval before it can go ahead and
16 raise any price. Therefore, in my view, the fact that Nongshim
17 would raise its price meant that Nongshim had already obtained
18 the government's approval. And so, you know -- and the same
19 goes for other parties, too.

20 **Q.** Mr. Ku, I understand that Ottogi was not the number one
21 company so not directly interfacing with the government in the
22 way that you said Nongshim was, or believed Nongshim was. But
23 did you have direct interactions with the government concerning
24 prices that Ottogi was charging?

25 **THE COURT:** Ms. Sweeney.

KU - DIRECT / EDELMAN

1 **MS. SWEENEY:** Objection. Vague as to time. And
2 relevance.

3 **THE COURT:** Overruled. You can continue.

4 **THE WITNESS:** Given the fact that we never were at the
5 number one position, we have never, to date, ever directly
6 negotiated with the government. That said, we had -- one time
7 or another did come under the government's, say, scrutiny.

8 For instance, sometime around August of 2008 a government
9 body called MAFRA, Ministry of Food and Agricultural and Rural
10 Affairs, made an inquiry as to whether or not we might want to
11 decrease our price. Similarly, in January of 2010, the KFTC
12 asked us as to whether or not we might be interested in
13 lowering our prices. So on that occasion we lowered our price.

14 **BY MR. EDELMAN:**

15 **Q.** Okay. I'm going to put the KFTC to later on in your
16 examination. But I do want to put in front of you an exhibit.

17 **MR. EDELMAN:** May I approach, Your Honor?

18 **THE COURT:** You may.

19 **MR. EDELMAN:** And Your Honor and counsel have copies
20 of this already.

21 **BY MR. EDELMAN:**

22 **Q.** Mr. Ku, could you just identify what this document is,
23 please?

24 **A.** So this goes back to that inquiry that I received from the
25 government ministry, MAFRA, as to whether or not we might want

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1 to decrease our ramen price or whether we had any such plans.
2 So upon that I made an inquiry with Ottogi Ramen, the company,
3 as to what was going on in terms of any changes in the
4 underlying costs. And this is what that -- this is that
5 inquiry.

6 **Q.** Okay. So this, as I understand it, is an email from you
7 to Ottogi Ramen?

8 **A.** Yes, that's correct.

9 **Q.** All right. And this is something that you sent in the
10 ordinary course of your business?

11 **A.** Yes, that's correct.

12 **Q.** All right. And the date of this is August 4 of 2008?

13 **A.** Yes, that's correct.

14 **MR. EDELMAN:** Your Honor, I would offer 796 into
15 evidence and ask for permission to publish it to the jury.

16 **THE COURT:** Any objection?

17 **MS. SWEENEY:** No, Your Honor.

18 **THE COURT:** It's admitted.

19 (Trial Exhibit 796 received in evidence)

20 **BY MR. EDELMAN:**

21 **Q.** Okay. Jim, could we please display Exhibit 796?

22 Okay. So I'm going to ask you about the bottom -- the
23 large bottom part, but where the big box is. And then
24 everything below that.

25 It indicates that -- first off, this is an email from you

KU - DIRECT / EDELMAN

1 to -- why don't you orient us. Tell us to whom you're sending
2 this email.

3 **A.** So this is an email that I was sending to Ottogi Ramen in
4 order to ascertain as to, you know, what was happening in terms
5 of any changes as to the underlying costs. I was asking for
6 material. This is what I referenced just a moment ago.

7 **Q.** So that's the "to" line, which we can highlight. Then
8 your name is on the left in bold. And then you indicate:
9 Hello, Deputy Division Manager. You must have received
10 communication from division Young-Hyun Doh, but just earlier
11 Ministry of Food Agriculture Forestry and Fisheries called each
12 ramen company to ask if there were any plans to decrease the
13 prices, as the flour price dropped recently. I'd like to find
14 out if there were any price decrease factor with the recent
15 drop in flour price, and if so, the degree of the decrease
16 factor. They said that they're looking into it, and I believe
17 that they will call again soon.

18 Are you looking at it in Korean in front of you?

19 **A.** Yes.

20 **THE INTERPRETER:** Your Honor, if it's permissible, as
21 a point of order, just to point out some quick translation
22 errors in the document. Instead of "they said," it's "I said."

23 **THE COURT:** I don't need that.

24 **THE INTERPRETER:** Unnecessary?

25 **THE COURT:** Thank you. Just translate what's being

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1 said in the courtroom, please. Thank you.

2 **THE INTERPRETER:** Okay.

3 **BY MR. EDELMAN:**

4 **Q.** All right. And you've given me a good lesson why I should
5 keep my questions short.

6 So Mr. Ku, after you wrote to Ottogi Ramen telling them
7 that the government had asked if Ottogi Korea was planning to
8 decrease the price of ramen, did you have further discussions
9 with the government about what Ottogi was going to do with its
10 ramen price in 2008?

11 **A.** Are you asking as to whether I've done anything else with
12 the government again?

13 **Q.** No. I'm asking with respect to this particular incident
14 in August of 2008, after you received the inquiry from the
15 government and wrote to Ottogi Ramen to find out about whether
16 there was going to be a decrease in flour costs, did you have
17 any further interaction with the government? Meetings,
18 telephone calls, anything of that nature?

19 **A.** So, first of all, I received this material from Ottogi
20 Ramen. And they said that, yes, indeed, the price of flour has
21 gone down, but otherwise all the other raw and sub materials
22 have actually gone up such that the overall cost of ramen has
23 gone up. And so there have been no reduction factors as to the
24 cost of ramen, they said. So I conveyed that over the phone
25 with -- to the government authorities, essentially telling them

KU - DIRECT / EDELMAN

1 that such being the case the cost of ramen has actually gone up
2 and that it does not look like it's going to come down any time
3 soon.

4 **Q.** And what was -- did the government accept your
5 explanation?

6 **A.** Yes. That's correct.

7 **Q.** Okay. Are there, from your familiarity as a Korean
8 citizen, are there other products that are widely known in
9 Korea to be subject to government control?

10 **THE COURT:** Ms. Sweeney?

11 **MS. SWEENEY:** Objection as to foundation for questions
12 raised by Mr. Edelman.

13 **THE COURT:** It's sustained. He's not an expert. But
14 from his personal knowledge is he aware of other products that
15 the government has interest in.

16 **MR. EDELMAN:** Thank you, Your Honor.

17 **THE WITNESS:** So the Korean government sets the price
18 index. And based upon that, it exercises cost control as to a
19 number of items. And to my understanding those things include
20 gasoline, raw rice, imported liquor, beer, and soju.

21 **BY MR. EDELMAN:**

22 **Q.** And switching gears, do you consider the prices of your
23 competitors when adjusting Ottogi Korea's prices for ramen?

24 **A.** Yes, I do consider it.

25 **Q.** And why?

KU - DIRECT / EDELMAN

1 **A.** Because the competition constitutes a part of the market
2 circumstances. And in order to win over some market share by
3 competing against them, we need to know about what -- how
4 things are with them.

5 **Q.** Mr. Ku, you've told us about the factors that you consider
6 in deciding whether to adjust price. The cost, the market
7 conditions and the government regulation.

8 Is there a particular process that Ottogi Korea follows in
9 deciding whether to adjust its price?

10 **A.** Yes. We do have such a process.

11 **Q.** Can you describe the process, please?

12 **A.** So firstly, when there's a rise as to the underlying
13 costs, the department responsible for managing price within our
14 company conducts an analysis as to the market circumstances.
15 So Ottogi Ramen for its part will typically tell us that the
16 underlying costs on their part have gone up and, therefore,
17 would we please allow for a price increase, the price at which
18 they get to sell their product to us.

19 And upon being -- upon receiving such an inquiry from
20 Ottogi Ramen, our department responsible for price management
21 will conduct the market analysis as to the market
22 circumstances, and also pose inquiries with the folks within
23 the sales field and come up with something of an interim
24 report.

25 And if and when there should happen to be a decision that,

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1 oh, yes, I guess we have to raise our prices, then there will
2 be some sort of a final report that is put together that
3 entails the date on which such a price increase shall become
4 effective, as well as the pertinent details thereof. And said
5 final report will be further rendered into the form of a
6 certain proposal and be turned into a package of materials that
7 we typically refer to as being a request for approval which
8 will be sent up the line and be put in front of the final
9 decision-making authority, namely the CEO. And if and when he
10 should approve the idea, then that is when there will be a
11 price increase.

12 **Q.** Okay. So this -- first off, this internal analysis
13 procedure that you've described, does that result in the
14 creation of various memos that are analyzed by you and others
15 in the company?

16 **A.** Yes, that's correct.

17 **Q.** And then when that -- at the culmination of that process
18 when something is transmitted to the CEO, what you call the
19 price increase proposal, is that an actual -- I assume that's
20 an actual document that's sent to the CEO for the CEO to sign
21 off on?

22 **A.** Yes, that's correct.

23 **Q.** All right. So let's -- let's go through that process in a
24 little bit of detail just so that the jury can see the types of
25 memos that you're talking about. I'm going to focus my

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1 questions on the year 2007.

2 You started your explanation by saying that the price
3 adjustment process starts with an increase in price from Ottogi
4 Ramen or some other raw manufacturer -- or, supplier.

5 In 2007 was there an increase in the price of flour?

6 **A.** Yes. The price of flour had gone up quite a bit in
7 February of 2007.

8 **Q.** How did you hear about it?

9 **A.** So, there was a lot of report -- lots of reports on that
10 in the press, and Ottogi Ramen also sent us word to that
11 extent. And we, too, are engaged in the business of
12 manufacturing and therefore we happen to use a lot of flour.
13 So it's something that we were aware of.

14 **Q.** And were you aware when there was this increase in flour
15 prices in 2007, that Nongshim had raised its price?

16 **A.** Well, there were a lot of reports as to how Nongshim was
17 going to be raising their prices.

18 **Q.** All right. So let's look at Exhibit 343, please. Do you
19 have that in front of you?

20 **A.** Yes.

21 **Q.** All right. Exhibit 343 is already in evidence so let's,
22 please, put it up on the screen.

23 Tell us what this is, please.

24 **A.** So this is an interim report of a sort that the marketing
25 office had received. Something to the effect that the

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1 competition had already raised its prices. And this is
2 something that's taking place here in that 2007 time frame when
3 we're looking into whether or not to increase our price.

4 **Q.** All right. And so I see the title here would suggest that
5 Nongshim had already raised its price by the date of this
6 interim memorandum?

7 **A.** So there had been an article that was put out that they
8 were going to be raising their price.

9 **Q.** Okay. And I'll get to that in just a second. These
10 interim memoranda that you just referred to, was it common in
11 these memos that were generated within the company to talk
12 about price increases that the company had become aware of by
13 its competitors?

14 **MS. SWEENEY:** Vague as to time and the number of
15 different memos over time.

16 **THE COURT:** All right. If you can specify that, that
17 would be great.

18 **MR. EDELMAN:** Sure.

19 **BY MR. EDELMAN:**

20 **Q.** For what period of time when you were at Ottogi Korea,
21 Mr. Ku, did you receive these types of memos?

22 **A.** Given that my department was the department that was
23 continually tasked with handling price, I'd been receiving
24 these memos ever since coming on board with the company.

25 **Q.** And to remind us what date that is, please?

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1 **A.** So as for me, that would be ever since the year 2000 and
2 on. But as for the department itself, it predates the year
3 2000. They'd always been the departments responsible for
4 handling price.

5 **Q.** So I'll confine my questioning to the years 2000 to 2010,
6 okay?

7 **A.** Yes.

8 **Q.** And during that period of time was it common when you
9 received these types of internal memoranda that the memoranda
10 would discuss what your competitors were doing in the market?

11 **A.** Yes. That's correct.

12 **Q.** All right. And you also mentioned -- and we'll get to it
13 a little bit later -- but that there's this final memo that
14 goes to the CEO at the end of the process.

15 In those memos that would go to the CEO in connection with
16 any price increase, would you typically discuss what the
17 competition was doing in the memo to the CEO?

18 **MS. SWEENEY:** Objection, vague --

19 **THE COURT REPORTER:** "Vague" and what?

20 **MR. BIRKHAUSER:** Leading.

21 **THE COURT:** I'll sustain the objection on leading.

22 **BY MR. EDELMAN:**

23 **Q.** I'll put that question aside. We'll get to it later. Who
24 is marketing team three?

25 **A.** So marketing team three is one of the teams under the

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1 marketing office. And typically the way things go is marketing
2 team one is responsible for handling our company's flagship
3 product; namely, curry. And marketing team three is
4 responsible for handling ramen.

5 **Q.** All right. And focusing on paragraph number 2 where it
6 says, Nongshim price increases, it indicates that Nongshim in
7 the first line has announced a price increase. And then in the
8 third line it says 7.4 percent on average. Do you see that?

9 **A.** Yes, I see it.

10 **Q.** All right. And it says 7.4 percent average as of March 1.
11 And the memo is dated February 28.

12 Where did Ottogi Korea obtain this information about a
13 price increase supposed to be effective March 1?

14 **A.** So here information to this effect that as of March the
15 1st, by this point in time -- namely February 28 -- this is
16 something that's already been reported in the press and by this
17 point in time it's already been made known to the customers out
18 there.

19 **Q.** Would you turn to Exhibit 781, please?

20 **A.** All right.

21 **Q.** All right. So Exhibit 781 is a compilation of a few
22 different documents. Would you tell us briefly what these are?

23 **A.** So the first document deals with how effective March the
24 1st Nongshim is going to be raising its prices by an average of
25 7.4 percent. And this one also entails the detailed, say,

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1 items in that regard, also.

2 **Q.** Let me just ask a broad picture, because I want folks to
3 see this document. Are these press reports that appeared in
4 Korea in February of 2007 relating to increase in prices by
5 Nongshim and other companies?

6 **A.** That is right. So, for instance, this one is dated the
7 27th of February, and it precedes that former document that we
8 just looked at by one day. And the details are pretty much the
9 same as each other.

10 **Q.** Are these press reports the type of thing that Ottogi
11 Korea considers in gathering information about the marketplace
12 and -- in deciding whether to raise its own prices?

13 **A.** Yes, that's correct.

14 **Q.** All right.

15 **MR. EDELMAN:** Offer 781 and request permission to
16 publish it, Your Honor.

17 **THE COURT:** Any objection?

18 **MS. SWEENEY:** Hearsay, Your Honor.

19 **THE COURT:** Okay. So the objection's overruled. 781
20 is admitted not for the truth, but for the purposes of the
21 timing and the information considered by Ottogi.

22 (Trial Exhibit 781 received in evidence)

23 **MR. EDELMAN:** Thank you, Your Honor.

24 **BY MR. EDELMAN:**

25 **Q.** So let's put the first page up and let's highlight the

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1 first -- the title and the first paragraph.

2 I'm sorry. I don't mean -- no, you're exactly right, Jim.
3 Thank you.

4 So there's a reference to an average of 7.4 percent,
5 Mr. Ku. Do you see that?

6 **A.** Yes, I see it.

7 **Q.** All right. Jim, and if you can put up Exhibit 343 which
8 we just saw a moment ago, side by side.

9 All right. And highlight the 7.4 percent reference in the
10 Ottogi memo.

11 So is the -- now, again, the date of the Ottogi memo in
12 relation to the article, which came first?

13 **A.** So the report in the press is the earlier date.

14 **Q.** Okay. So the information that's in Ottogi's memo, Exhibit
15 343, is that public information about Nongshim's price
16 increase?

17 **A.** Yes, that's what it is.

18 **Q.** Okay. We can take down the article, Jim, please, and
19 let's go back to just Exhibit 343. And I want to direct your
20 attention to the third page of that memo.

21 Now, this is entitled Details of Nongshim's Price Increase
22 for March 1, 2007.

23 Now, where would Ottogi have received that information?

24 **A.** So again, this being the date, by this point in time
25 Nongshim will have already sent an initial announcement -- a

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1 communiqué of a sort -- to their customers. And this kind of
2 information is easily obtainable on our part through such
3 customers of theirs.

4 **Q.** All right. So let's now turn to page 1006-T. And I want
5 to direct your attention to the recommendation at paragraph 6.
6 If we can blow up paragraph 6, please.

7 All right. Now, for context, this is a memo that's being
8 sent to you by one of the people who reports to you with their
9 recommendation on how Ottogi should respond to Nongshim's price
10 increase?

11 **A.** It's actually not a subordinate of mine, but this comes
12 courtesy of our marketing office. And, basically, it entails
13 something to the effect that it seems like it would be a good
14 idea for us to raise ours effective April the 1st.

15 **Q.** And did you raise prices on April 1 as recommended in this
16 memo?

17 **A.** We did not.

18 **Q.** Why not?

19 **A.** So we did review this, say, idea, but we ultimately chose
20 to go with a different strategy.

21 **Q.** And what was that strategy, sir?

22 **A.** The decision was not to raise the price. And, rather, to
23 try to take away some of the market share belonging to the
24 competition.

25 **Q.** Let me direct you now to Exhibit 765, please. Tell us

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1 what this is just generally as a description.

2 **A.** So this is an interim memo as created by marketing team
3 three concerning a prospective 2007 price increase.

4 **MR. EDELMAN:** I would offer 765 into evidence Your
5 Honor.

6 **THE COURT:** Any objection?

7 **MS. SWEENEY:** No, Your Honor.

8 **THE COURT:** 765 is admitted.

9 (Trial Exhibit 765 received in evidence)

10 **MR. EDELMAN:** All right. May we publish it, Your
11 Honor?

12 **THE COURT:** Yes.

13 **BY MR. EDELMAN:**

14 **Q.** So, Mr. Ku, this is, what? A few weeks after the memo
15 that we saw just a moment ago?

16 **A.** Yes, that's correct.

17 **Q.** And is this another analysis by marketing as to whether it
18 makes sense to raise the price or not?

19 **A.** Yes. It's an interim report as compiled by the marketing
20 office.

21 **Q.** All right. And if you look at, for example -- in
22 paragraph 3 on that page, and it says --

23 I'm sorry. Jim, could you highlight the box just beneath
24 that?

25 Just to give us an example, it talks about a subject of

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1 O-Thick Noodles. And it says as a reason: To build foundation
2 for competition against Neoguri.

3 Can you explain what that's a reference to?

4 **A.** So, basically, there's an opinion to the effect that we
5 ought not to raise the price on the O-Thick Noodles, and rather
6 try to compete against Neoguri, which is raccoon. Whereas, for
7 some of the other items we would be okay to raise the prices
8 on.

9 **Q.** I'm sorry. Whereas for some of the other items --

10 **A.** We would be okay to raise the prices on.

11 **Q.** Okay. That's the recommendation.

12 **A.** That's right.

13 **Q.** So let's look at the recommendation on the last page, Bate
14 stamp 18440-T -- or, T. Paragraph 4.

15 Okay. So it says: To apply an incremental price on
16 packaging materials starting with Jin Ramen production on
17 March 30, and that the price increase will be applied to entire
18 products as of April 1.

19 Did you follow that recommendation?

20 **A.** No, we did not follow these recommendations, but rather
21 chose to further analyze the market circumstances.

22 **Q.** Could you look at Exhibit 655, please. And just briefly
23 describe what this email is, please.

24 **A.** So this is something that my department boss, Mr.
25 Young-Hyun Doh, sent over to me. And it, basically, includes

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1 certain opinions submitted by the folks within the sales field
2 itself. So it's material that I received in order that I might
3 be able to review and analyze the opinions as put forth by the
4 guys out in the field.

5 **Q.** All right.

6 **MR. EDELMAN:** I would offer Exhibit 655 into evidence
7 and request permission to publish.

8 **THE COURT:** Any objection?

9 **MS. SWEENEY:** No objection, Your Honor.

10 **THE COURT:** It's admitted.

11 (Trial Exhibit 655 received in evidence)

12 **BY MR. EDELMAN:**

13 **Q.** So let's look at this exhibit on the screen. And let's
14 blow up -- well, the subject line is the Summary of Ramen
15 Opinion. Let's just blow up the text of the email.

16 So this is an email sending you a number of attachments,
17 right?

18 **A.** Yes, that's correct.

19 **Q.** And it says things like -- on the first line -- opinion
20 for ramen price increase, benefits if ramen price is not
21 increased, opinion of ramen market and price policy.

22 Are these analyses that were being done by people in the
23 field at Ottogi Korea presenting their views as to whether they
24 thought it made sense for Ottogi to raise its price or not?

25 **THE COURT:** Mr. Birkhaeuser.

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1 **MR. BIRKHAUSER:** Leading.

2 **THE COURT:** Overruled. You can answer.

3 **THE WITNESS:** Yes. These are individuals sending over
4 their respective opinions as to the question of whether or not
5 to increase price.

6 **BY MR. EDELMAN:**

7 **Q.** Okay. Now in your notebook, Mr. Ku, I'd like you to look
8 at Exhibits 656 through 661 -- those are five memos -- and tell
9 me if these are the memos you received that were attachments to
10 this email representing the analyses of the various people in
11 the field as to whether Ottogi should raise its price.

12 **A.** Yes, indeed.

13 **MR. EDELMAN:** Offer 656 through 661 into evidence and
14 request permission to publish.

15 **THE COURT:** Any objection?

16 **MS. SWEENEY:** No, Your Honor.

17 **THE COURT:** They're all admitted.

18 (Trial Exhibits 656 through 661 received in evidence)

19 **MR. EDELMAN:** Thank you.

20 **BY MR. EDELMAN:**

21 **Q.** Mr. Ku, let's look at Exhibit 658. And is this -- this is
22 one of the memos that you received?

23 **A.** Yes, that's correct.

24 **Q.** All right. From one of the people in the field?

25 **A.** Yes.

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1 Q. All right. Let's look at -- let's look at the first box.
2 Tell us what this is.

3 A. So this entails details based upon research as to the
4 price at which products by a competition -- by the competition,
5 as well as our company, are being sold at discount stores and
6 supermarkets.

7 Q. Okay. So this represents your people going out to the
8 field and looking at the prices in the supermarkets, et cetera?

9 A. Yes, that's correct.

10 Q. And let's look at paragraph 3 on the bottom. And let's
11 highlight that paragraph, or blow it up, please.

12 Tell us what this paragraph discusses, please.

13 A. So this is an observation as to how the status concerning
14 the sales on the part of the competition is going. It in
15 particular says that Samyang's sales have increased in
16 comparison to Nongshim's. And it also talks about how Samyang
17 has come up with something that's an improvement, and that the
18 consumers' reception to that is rather decent.

19 Q. So there's a reference here to -- in the second
20 paragraph -- to talking with the store owners. Do you see
21 that?

22 A. Yes, I see it.

23 Q. And it says that they said that the consumers' recognition
24 improved a lot through product improvement. Talking about
25 Samyang, right?

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1 **A.** Yes. That's correct.

2 **Q.** Is this the type of thing that your sales people would
3 typically do? They'd go into the stores, they'd talk to the
4 managers and the owners to get information about the market and
5 how your competitors were doing?

6 **A.** Yes. That's correct.

7 **Q.** Let's go to the next page, please, and let's highlight the
8 box that contains the merits of increasing the price (sic) and
9 the drawbacks of not increasing the price. Do you see that?

10 **A.** Yes, that's there.

11 **Q.** Is that one of the typical things that you would do in
12 deciding whether to increase a price? You would weigh the pros
13 and the cons of raising a price?

14 **A.** Yes. That's correct.

15 **Q.** So, Mr. Ku, we've seen now about eight memos analyzing
16 whether or not to raise prices in 2007. Do any of these memos
17 discuss an agreement to raise prices together with any of your
18 competitors?

19 **A.** No. None of the documents we've gone through just now say
20 anything about there being any, say, agreement with any of the
21 competition that we ought to raise together or that -- anything
22 that would suggest that we felt, say, obligated our raise our
23 prices.

24 It would seem to me that if there had been such an
25 agreement, then I don't think there would have been any need

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1 for us to go through this interim reporting and analysis. For
2 if that were the case, upon Nongshim raising its price, we
3 simply needed to follow suit. But we did not do that.

4 **Q.** Did anyone from one of your competitors ever contact you
5 to pressure you to raise prices when you adopted a different
6 strategy than they did in raising prices?

7 **A.** No. Never has there been anything like that. We have
8 never been put under any pressure, nor is it possible for any
9 competition to exert any pressure upon us.

10 **Q.** Have you heard of something called old-price support?

11 **A.** Yes, I have.

12 **Q.** Can you tell the ladies and gentlemen of the jury what
13 old-price support is and how it works?

14 **A.** So what old-price support refers to is the provision of
15 the product subject to the increased new price, but at the
16 old-price, vis-à-vis the customers. It's a sort of a discount,
17 say, policy. The customers typically like this because what it
18 means is they get to buy at the old-price and get to sell at
19 the newer price, meaning there's a greater margin available for
20 them.

21 **Q.** And why do you offer old-price support?

22 **A.** It's in order to give the customers some sort of a merit
23 so that the new increased price would be more acceptable to
24 them.

25 **Q.** Now, do your competitors use old-price support to pressure

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1 you to raise your prices?

2 **MS. SWEENEY:** Objection. Leading.

3 **THE COURT:** Overruled.

4 **THE WITNESS:** I fail to understand how any use of
5 old-price support could constitute pressure on us. Because to
6 extend old-price support means that you're providing a discount
7 in supplying product to somebody. If anybody were to do that,
8 then we would have to extend an additional discount.

9 **BY MR. EDELMAN:**

10 **Q.** Go on.

11 **A.** So if some competition out there were to extend old-price
12 support on their part, then we would try to counter that by
13 extending additional discounts.

14 **Q.** And when you say "extending additional discount," do you
15 mean continuing to sell at what was your old-price?

16 **A.** Yes. So if and when the competition provides old-price
17 support, then we would want to sell product at a lower, less
18 expensive price.

19 **Q.** Okay. And do you provide price support for products other
20 than ramen?

21 **A.** Yes. Old-price support is something that also applies to
22 other products.

23 **Q.** Other products that Ottogi sells.

24 **A.** That's right.

25 **Q.** Can you give us examples?

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1 **A.** In the past we've also extended old-price support to sweet
2 corn. Same as to noodles, non-ramen noodles. Also to soy
3 sauce types of -- other sauces. So simply put, old-price
4 support is something that is applicable to various products out
5 there.

6 **Q.** So, and you still do it today?

7 **A.** Yes, even as of late we have been doing that.

8 **Q.** So price support and ramen you didn't -- that's not
9 something you stopped doing in 2009 or 2010?

10 **A.** That's right. Nothing like that.

11 **Q.** All right. Let's go to Exhibit 344, please.

12 Can you tell us what -- tell us briefly, please, what this
13 is?

14 **A.** It's an interim report entailing analysis on the price of
15 ramen back in 2007.

16 **Q.** June of 2007?

17 **A.** Yes. It's compiled as of June the 26th, 2007.

18 **Q.** All right. So this is three months after the last price
19 support memo we saw from March, right?

20 **A.** Yes, that's correct.

21 **MR. EDELMAN:** May I offer this into evidence and
22 publish it, Your Honor?

23 **THE COURT:** Any objection?

24 **MS. SWEENEY:** No, Your Honor.

25 **THE COURT:** All right. It's admitted.

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(Trial Exhibit 344 received in evidence)

BY MR. EDELMAN:

Q. So looking at Exhibit 344, read -- well, let me do it out loud in English: The purpose is to analyze the market trends and sales reactions after the ramen price increase of Nongshim and Samyang and to determine the timing of our price increase.

Is that your understanding of the purpose of this memo?

A. Yes, I see it.

Q. Okay. And if we blow up paragraph number 2 in the box as well as the -- Jim, just the three lines after that.

All right. So this talks about the market share changes of the respective companies. Do you see that?

A. Yes.

Q. And then it says: PDS in parenthesis. Who was PDS?

A. This is an outside company called POS Data Systems. It's a company that provides an information service. What they do is they conduct research as to sales data and these sorts of things and make it available to you.

Q. All right. So this is a research that Ottogi pays for?

A. Yeah. We pay money and get to see this.

Q. In the paragraph just beneath the box the discussion of Shin Ramen and Samyang ramen. Again, are those typical types of discussions that we would see in these interim memos where Ottogi is trying to decide whether to raise its price?

A. Yes, that's correct.

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1 Q. So look at the conclusion on the last page of this
2 document, the one that says: Opinions on the price increase.
3 Let's blow up paragraph 2, please.

4 So we're in June. And this memo is saying: It behooves
5 us to implement our company's price increase in September.

6 A. Yes.

7 Q. So we're about four months from when Nongshim raised its
8 price on March 1 of 2007 for ramen. Why, in June, had Ottogi
9 not raised its price in response to the increase in flour costs
10 and other rising costs?

11 A. So on account of the rise in the cost of flour, there had
12 been a lot of requests from Ottogi Ramen made of us to raise
13 the price of ramen. But given the low, say, market share that
14 we were enjoying at the time, we told Ottogi Ramen that we
15 would seek to increase our share of the pie by going after
16 economies of scale so as to help effectively lower the overall
17 cost. And so up until this point in time we had not yet raised
18 our price.

19 Q. When you say increase your share of the pie, are you
20 referring to trying to increase your market share by not
21 increasing your cost -- raising your price?

22 A. Yes, that's correct.

23 Q. Am I correct, though, that you did end up raising your
24 price in September?

25 A. Yes. After all, we did raise the price in September.

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1 **Q.** And why did you do it then?

2 **A.** And so the reason why we hadn't at first raised the price
3 was because we wanted to increase our market share so as to
4 increase our revenue. Yet in spite of the fact that we were
5 not raising our price, our market share was not growing. And
6 in the meantime Ottogi Ramen, seeing as how the revenue was not
7 growing, they were continually under these cost pressures so
8 they kept sending us these memos asking us to raise their
9 price.

10 So ultimately, we ended up raising the price of ramen.

11 **Q.** And that about six, what? Six months after Nongshim did?

12 **A.** Yes, that's correct.

13 **Q.** All right. And let me just, before we leave Exhibit 344,
14 let me turn your attention back to page 2, Bate stamp 1012-T.
15 And let's blow up the paragraph 2 relating to Samyang.

16 And I want to direct your attention in particular to the
17 line that says: As ascertained through Samyang's marketing
18 office.

19 Do you see that? Does this appear to reference some kind
20 of a discussion with somebody in Samyang's marketing office?

21 **A.** Yes, that's what it appears to be.

22 **Q.** All right. And just briefly, what is that discussion
23 about?

24 **MR. BIRKHAUSER:** Objection, foundation.

25 **THE COURT:** Could you lay just a little bit more of a

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1 foundation for that, Mr. Edelman?

2 **MR. EDELMAN:** Sure.

3 **BY MR. EDELMAN:**

4 **Q.** Well, have you reviewed this paragraph?

5 **A.** Yes, I did.

6 **Q.** And is this a memo you would have received -- in fact, did
7 receive -- on or about the day it was generated?

8 **A.** Yes, that's correct.

9 **Q.** Okay. Can you tell us what you understand -- what you
10 understood this highlighted section to refer to?

11 **MR. BIRKHAUSER:** Same objection.

12 **THE COURT:** Overruled.

13 **THE WITNESS:** So it is something to the effect that as
14 far as Samyang is concerned their agents, sales agents, are not
15 really abiding by their policy such that it's a headache for
16 them. That their sales are lackluster.

17 **BY MR. EDELMAN:**

18 **Q.** All right. And does this discussion with someone at
19 Samyang -- apparent discussion with someone at Samyang --
20 reflect any agreement between Ottogi and Samyang to set prices?

21 **THE COURT:** Ms Sweeney.

22 **MS. SWEENEY:** Objection as to leading.

23 **THE COURT:** Sustained.

24 **BY MR. EDELMAN:**

25 **Q.** Is there any reference in this memorandum to any sort of

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1 agreement to set prices?

2 **A.** No. There is nothing whatsoever to that effect. Even
3 after getting this sort of a memo, we did not raise our price.

4 **Q.** You're referring to the recommendation at the end of the
5 memo, if we can go to that.

6 **A.** Right.

7 Well, so my point is we made no decision to raise the
8 price even after receiving this memo.

9 **Q.** Okay. Let's look to Exhibit 373, please. Can you briefly
10 identify what this document is?

11 **A.** So this is something that pertains to the year 2007. It
12 is something that includes the proposal form and a somewhat
13 short final report. This, together, is what we call the
14 approval for -- strike -- request for approval document
15 package.

16 **Q.** Okay. And so the jury is now familiar with the various
17 analyses, the various exhibits. Remind us where does this fit
18 in the process in terms of Nongshim raising its price? I'm
19 sorry. Ottogi raising its price.

20 **A.** So this is the final report that is, basically, floated to
21 the CEO for purposes of -- purposes of obtaining his approval.

22 **Q.** Okay. Now this -- does this memo have the various details
23 about what Nongshim is doing and Samyang is doing and what
24 you're seeing in the various stores, the types of things we saw
25 earlier?

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1 **A.** No. This does not contain that sort of, say, complicated
2 detail. So this sort of a document that is submitted to the
3 CEO for approval purposes entails just something very simple
4 and clean in terms of its objective. When the price increase
5 shall be effective and by how much it's going to go up, and
6 such.

7 **Q.** All right.

8 **MR. EDELMAN:** I realize I forgot to offer Exhibit 373
9 into evidence.

10 **THE COURT:** Any objection?

11 **MS. SWEENEY:** No, Your Honor.

12 **THE COURT:** It's admitted.

13 (Trial Exhibit 373 received in evidence)

14 **BY MR. EDELMAN:**

15 **Q.** Let's publish that, please. So again for purposes of
16 understanding the format of these things, first you have what's
17 called a proposal form, correct?

18 **A.** Yes.

19 **Q.** And then you have something that's called a review report
20 for price increase of ramen products.

21 **A.** Yes, that's correct.

22 **Q.** And if we go back to the proposal form, first page, and we
23 look at the bottom of the page, number 4, it says Attachment:
24 The details of adjustment for each product item.

25 **A.** Yes.

1 Q. Is it typical -- is this a typical format Ottogi would use
2 where you would have this proposal, and then you would have an
3 attachment with additional information?

4 MS. SWEENEY: Objection. Leading.

5 THE COURT: Overruled.

6 THE WITNESS: Yes. So on the very first page you have
7 a box on which he, the decision-maker, the CEO, can sign off
8 on. And way at the end you will see the final report attached.

9 BY MR. EDELMAN:

10 Q. So the box you're talking about is on the top where it has
11 the -- is that the -- what you call the chop?

12 A. Yes, that's correct.

13 Q. All right. And you see just below the first two boxes it
14 says: Due to the price increase of raw and subsidiary
15 materials, the price adjustment is proposed as below to improve
16 the cost ratio. Therefore, please consider and approve.

17 Is that an accurate summary of why Ottogi was ultimately
18 raising its prices? Because of an increase in raw and
19 subsidiary materials?

20 A. Yes, that's correct.

21 Q. Okay. And so did you prepare this document?

22 A. Yes. I am the one who did it.

23 Q. And are you referenced as the hands-on person in the top
24 left where it says "Bang-Wan"?

25 A. That's correct.

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1 Q. If we go to the second page, the attachment, it shows in
2 the top right corner that it's actually from your supervisor,
3 Mr. Young-Hyun Doh. Why does it have Mr. Doh's name if you
4 prepared it?

5 A. So I am the one who prepared this document; and my boss,
6 Mr. Doh, read through this and submitted it in his name.

7 Q. All right. And Mr. Ku, was your final recommendation as
8 contained in Exhibit 373 to match Nongshim Korea's prices?

9 A. No. We were not only much later than Nongshim in terms of
10 raising our price, but our price was lower than Nongshim's.

11 Q. So you waited six months, and your price was different?

12 A. Right.

13 Q. All right. Let's compare Ottogi's 2007 prices when you
14 raised them, and Nongshim's prices.

15 And, Jim, if you could please put up Exhibit 343 and 373
16 next to each other. And I'm taking Nongshim's prices from what
17 you had in your memo in Exhibit 343.

18 So, Jim, on the right hand exhibit we could turn to the
19 second page, please?

20 (Document displayed)

21 Q. Okay. So just to cite a few examples. In 2007 what was
22 the price of Nongshim's flagship -- I realized -- do you see
23 them on the screen? They are probably in English and it's not
24 helpful.

25 A. I see it.

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1 Q. All right. Can you tell us what the price of Nongshim's
2 flagship product was?

3 A. It says it was 430 Korean Won, W-O-N.

4 Q. All right.

5 MR. EDELMAN: Jim, can you highlight the 430 under
6 "Adjusted"? Thank you.

7 BY MR. EDELMAN

8 Q. And if we look to the left on Ottogi's flagship product,
9 the Jin Ramen, what is its price?

10 A. 417 Won.

11 Q. And Nongshim's Neoguri? It's three down.

12 A. So Nongshim's Neoguri is listed at 463.

13 Q. Is there a product sold by Ottogi that competes with
14 Nongshim's Neoguri?

15 A. So we have the O-Thick noodles, which basically competes
16 against Nongshim's Neoguri product, but we did not implement a
17 price adjustment for that.

18 Q. So what's your price?

19 A. It's 434.

20 Q. So Nongshim raised its price on its competing product, but
21 you did not raise yours?

22 A. That's correct.

23 Q. How about Nongshim's chapagetti?

24 A. Their chapagetti is 496 KRW.

25 Q. Do you have a product that competes with their chapagetti?

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1 **A.** We have something called the Beijing Black Bean Sauce
2 Noodle. That is at 486.

3 **Q.** So let's leave 2007 behind and go to 2008. In 2008 did
4 Ottogi go through a similar process of trying to decide whether
5 to raise prices once Nongshim had made an announcement that it
6 was going to raise its prices?

7 **A.** Yes, that's correct.

8 **Q.** Was there something that had that happened that was unique
9 in the market in terms of the prices of subsidiary materials in
10 2008?

11 **A.** So sometime around the end of 2007 and the beginning of
12 2008, the international price as to wheat flour and palm oil,
13 et cetera, basically increased drastically.

14 **Q.** And did you go through a similar process in 2008 to what
15 we just saw with respect to 2007 in terms of analyzing whether
16 to raise prices?

17 **A.** Yes, that's correct.

18 **Q.** Look quickly at Exhibit 783 and tell me if these are news
19 articles that appeared in the press in 2008?

20 **MS. SWEENEY:** Counsel, I couldn't hear the number.

21 **MR. EDELMAN:** 783.

22 **MS. SWEENEY:** Thank you.

23 (Brief pause.)

24 **A.** Okay. I've gone through it.

25

1 **BY MR. EDELMAN**

2 **Q.** Okay. And did you, once again, see these reports in the
3 press in 2008 in the process of deciding what Ottogi was going
4 to do with respect to its prices?

5 **A.** Yes. That's correct.

6 **MR. EDELMAN:** I offer 783, Your Honor.

7 **MS. SWEENEY:** To the extent they are not being offered
8 for the truth, no objection.

9 **THE COURT:** All right. So 783 will be admitted. They
10 are the newspaper articles.

11 Again, they are not offered for the truth of what's there,
12 but for information that Ottogi was considering at the time.

13 (Trial Exhibit 783 received in evidence)

14 **MR. EDELMAN:** Thank you, your Honor.

15 **BY MR. EDELMAN**

16 **Q.** Would you turn to 783-6, please? Which I think would be 8
17 for you -- no, that's wrong. Sorry, that's not the Korean
18 version. It's 18. I'm sorry.

19 (Document displayed)

20 **Q.** And what is this news article reporting on?

21 **A.** So, firstly, this article is dated February 18th, 2008 and
22 it essentially sets forth that effective the 20th of February,
23 Nongshim will be raising their price by 100 Korean Won,
24 representing 5 to 16 percent.

25 And then it talks about how there had been an increase as

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1 to the underlying cost of the raw end sub materials.

2 And, finally, it also entails the detailed breakdown as to
3 Nongshim's products.

4 **Q.** So these references to flour going up 50 percent, palm oil
5 94 percent, rice bran oil 55 percent, was there a big spike in
6 prices in 2007, 2008?

7 **A.** Yes, indeed.

8 **Q.** Would you look at Exhibit 665, please?

9 (Witness complied.)

10 **Q.** And tell us what this is?

11 **A.** This is market information -- well, it's an email
12 containing market information coming from one of our
13 salespersons to me.

14 And as attachments it includes things about Nongshim's --
15 the details concerning Nongshim's price increase as well as
16 Nongshim's old price support.

17 **MR. EDELMAN:** Offer 665, Your Honor.

18 **THE COURT:** Any objection?

19 **MS. SWEENEY:** No, your Honor.

20 **THE COURT:** It's admitted.

21 (Trial Exhibit 665 received in evidence)

22 **BY MR. EDELMAN**

23 **Q.** Let's look at the first page, please.

24 (Document displayed)

25 **Q.** So this email to you on February 23rd, 2008, it says:

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1 "Here's Nongshim Ramen Unit Price Increase List."

2 A. That's correct.

3 Q. And the attachments are in Exhibits 666 and 667; correct?

4 A. Yes, that's correct.

5 MR. EDELMAN: Offer 666 and 667, Your Honor.

6 THE COURT: Any objection?

7 MS. SWEENEY: No objections, Your Honor.

8 THE COURT: All right. They are admitted.

9 (Trial Exhibits 666 and 667 received in evidence)

10 BY MR. EDELMAN

11 Q. Okay. So my question to you, Mr. Ku, you have one of your
12 salespeople sending you a price list and information on old
13 price support that he received from one of his customers; is
14 that correct?

15 MR. BIRKHAUSER: Objection. Leading.

16 THE COURT: The objection was leading. It's
17 sustained.

18 MR. EDELMAN: Okay. I'm sorry. Let me reask that
19 question.

20 BY MR. EDELMAN

21 Q. Let's look at Exhibit 666.

22 (Document displayed)

23 Q. This is one of the attachments to the email. Can you tell
24 us what this is?

25 A. So this entailed pertinent details on Nongshim's price

1 increase.

2 Q. All right. Now let's look at Exhibit 667.

3 (Document displayed)

4 Q. This is another one of the attachments that you were sent?

5 A. That's correct.

6 Q. All right. And what is this?

7 A. So it entails something about how Nongshim is going to
8 extend old price support following their price increase.

9 Q. Where did you understand that your salesperson obtained
10 this information about Nongshim's prices and its price support?

11 MS. SWEENEY: Objection. Foundation.

12 THE COURT: Overruled.

13 A. So he got this from a particular customer who deals in
14 both Nongshim's products as well as our products.

15 BY MR. EDELMAN

16 Q. And how do you know that?

17 A. That's what the guy who sent this over to me told me.

18 Q. And is it common for you to be able to get price lists,
19 information on price support that your competitors are offering
20 from the customers that you share in common?

21 MR. BIRKHAUSER: Objection. Leading.

22 THE COURT: Overruled.

23 A. So this kind of information is something that these
24 customers are typically willing to easily provide you with
25 because by doing so, by sharing with you details about some

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1 other company, they have these hopes that maybe you might
2 extend to them some further discounts or whatever benefits
3 there may be.

4 **THE COURT:** All right? Why don't we take our morning
5 break.

6 Ladies and gentlemen, 15 minutes. Please remember the
7 admonitions.

8 (Jury exits the courtroom at 9:53 a.m.)

9 **THE COURT:** We'll be in recess.

10 (Whereupon there was a recess in the proceedings
11 from 9:53 a.m. until 10:08 a.m.)

12 **MR. EDELMAN:** Your Honor, I'm not sure if there is
13 still an objection to our summary exhibit, which I would be
14 using in this next section of my outline.

15 **THE COURT:** Is there any question about the accuracy
16 of the summary?

17 **MS. SWEENEY:** There is, Your Honor. And Ms. Cho
18 analyzed the documents that counsel pointed to as supporting
19 the summary exhibit and there are inaccuracies in those
20 documents, both within the supporting documents and as compared
21 to the summary exhibit. So it all -- they have different start
22 dates for the price increases.

23 What he's trying to do with the exhibit is show what the
24 exchange rate would have been and so what the price in U.S.
25 dollars would have been. So you can't determine the correct

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1 exchange rate if you don't know the date of the increase.

2 And Ms. Cho -- oh, is right here. She can explain it
3 better than me.

4 **THE COURT:** Ms. Cho, what is the issue and how
5 material is it?

6 **MS. CHO:** Just a moment, Your Honor.

7 But so when we looked through the cited documents, they
8 were a series of Requests For Approval documents and the date
9 of adjustment listed in those documents had different dates
10 than what is currently listed there. And when you conduct the
11 exchange rate calculation, then that obviously has an impact on
12 the price on the right-hand column.

13 So that was one of the material objections that we had to
14 this document.

15 **THE COURT:** Okay. And so how material are the
16 exchange rate differences between what you believe is accurate
17 and what is shown on the summary?

18 **MS. CHO:** It's a difference of a cent, but it is -- it
19 still does go to the accuracy of the date of adjustment, as
20 well as actual chooolgo warehouse price.

21 **THE COURT:** Ms. Yu.

22 **MS. YU:** So, first of all, I would like to note that
23 plaintiffs have relied on the exact same dates to establish
24 when Ottogi Korea's prices have changed. They have relied on
25 Trial Exhibit 10, I believe, that shows the same date. So if

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1 there is no dispute regarding the dates, then there is actually
2 no dispute regarding the exchange rate.

3 And during the break Ms. Cho and I have been discussing
4 that I would provide additional support that shows that these
5 dates are actually accurate. And I'm currently looking for one
6 additional trial exhibit to show Ms. Cho so that she could
7 satisfy herself that those dates are the actual dates that
8 Ottogi Korea's prices have changed.

9 **THE COURT:** Okay. So I'm going to conditionally allow
10 the summary. And if there is some substitution that needs to
11 be made because of any inaccuracy, we can do that.

12 **MR. EDELMAN:** Thank you, your Honor.

13 **MS. CHO:** Thank you, your Honor.

14 (Jury enters the courtroom at 10:12 a.m.)

15 **THE COURT:** All right. Please be seated, everybody.
16 Mr. Edelman, go ahead.

17 **MR. EDELMAN:** Thank you, your Honor.

18 **BY MR. EDELMAN**

19 **Q.** Mr. Ku, when did Ottogi Korea raise its prices in 2008?

20 **A.** Effective April 1st.

21 **Q.** Would you look at Exhibit 670, please.

22 (Witness complied.)

23 **A.** All right.

24 **Q.** Is this the final document, the Proposal Form and the
25 product increase review report, that was submitted to the

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1 president with respect to the 2008 price increase?

2 A. Yes, that's correct.

3 MR. EDELMAN: Offer 670, Your Honor.

4 THE COURT: Any objection?

5 MS. SWEENEY: No, your Honor.

6 THE COURT: It's admitted.

7 (Trial Exhibit 670 received in evidence)

8 BY MR. EDELMAN

9 Q. So if we look at the face page of Exhibit 670.

10 (Document displayed)

11 A. All right.

12 Q. Do you have it?

13 MR. EDELMAN: I'm sorry. Is it on the screen? I
14 don't have it on the screen.

15 THE CLERK: I think it's a matter of a roving failure.

16 THE COURT: Some but not all.

17 MR. EDELMAN: Okay, fine. As long as the jury has it,
18 Your Honor.

19 BY MR. EDELMAN

20 Q. This is the same format, right, that we saw for 2007?

21 A. Yes, that's correct.

22 Q. And this is -- am I correct that this is the format you
23 used for all of these final reports that go to the president on
24 pricing?

25 A. Yeah, that's correct.

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1 Q. And so for 2008, Mr. Ku, did you match Nongshim's prices?

2 A. No. As in the case with 2007, we were different as to the
3 date in terms of Nongshim and we were lower in price.

4 Q. Now, what about the timing of your price increase? You
5 said it was different. How different was it?

6 A. So whereas back in 2007 we were behind by, oh, six months
7 or so, but in 2008 we were behind by only two months or so.

8 Q. Let's look at the second page, which contains the
9 attachment, the report part.

10 (Document displayed)

11 Q. So in 2006 you were -- I'm sorry, 2007 you were about six
12 months different from Nongshim in price increase, and here you
13 just said you were a month and a half for 2008. Why were you
14 closer in time in 2008 than you were in 2007?

15 A. So during the year 2008, as we had just seen in that one
16 series of articles, the cost of the raw and subsidiary
17 materials had gone up quite some bit, quite a bit.

18 And so already starting in February of 2018 -- 2008,
19 Ottogi Ramen had continually been asking us to allow for a
20 price increase. It was to the point where Ottogi Ramen was
21 saying that they could no longer bear given the costs that had
22 become so burdensome.

23 And going back to 2008, even though we had raised our
24 price quite a bit later in comparison to Nongshim, the market
25 share did not really increase. So by this point in time our

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1 thinking was just by holding our price lower is not going to
2 gain us any more market share necessarily.

3 **Q.** Okay. So we've reviewed the price changes for 2007, 2008
4 and I know there was -- you told us there was no price increase
5 for 2006.

6 So was the process similar for 2001, 2003, 2004 and 2005
7 to what you've just explained for 2007 and 2008?

8 **MS. SWEENEY:** Objection. Foundation.

9 **THE COURT:** Sustained. Could you lay a foundation for
10 those dates? Because his position changed, as I understand it.

11 **MR. EDELMAN:** Okay.

12 **BY MR. EDELMAN**

13 **Q.** Early in your examination, Mr. Ku, I asked you the dates
14 of the price changes between the years 2000 and 2010. Do you
15 recall that?

16 **A.** Yes.

17 **Q.** And can you remind us what those -- what years Ottogi had
18 price increases?

19 **A.** That would be 2001 and 2003, January of 2003, which is
20 something that we reviewed back in 2002. And then 2004, 2005,
21 2007, 2008 and 2010.

22 **Q.** Okay. And just for foundational purposes, remind us how
23 you know that?

24 **A.** That's because sometimes I'm the one who did the review
25 and otherwise I've also reviewed the other review documents.

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1 Q. For each of -- each of the price increases that you just
2 mentioned?

3 A. Yes, that's correct.

4 Q. All right. And so back to my earlier question. Was the
5 process that you explained to the jury for 2007 and 2008
6 similar to the process that Ottogi employed for the years 2001,
7 2002/'03, 2004 and 2005?

8 MS. SWEENEY: Objection. Foundation.

9 THE COURT: Yeah. Sustained. He may have seen the
10 same documents -- the documents, but he wasn't involved in the
11 prices, so you may want to clarify.

12 MR. EDELMAN: Let me try to nail this down a little
13 better.

14 BY MR. EDELMAN

15 Q. In the years 2001, 2003, 2004 and 2005 explain to us what
16 your role was with respect to Ottogi's decision and process for
17 raising prices?

18 A. So for the years 2007, 2008 and 2010 it was our department
19 that was responsible for handling these sorts of matters, and
20 it was, in fact, me, personally who performed the price
21 adjustments.

22 And even prior to 2007, it was still our department that
23 was responsible for handling these sorts of price related
24 things, included such things as discounts, et cetera. So if
25 there would be any change as to the choolgo price, then our

1 department would be notified as to same.

2 Q. And were you personally involved in the price increases
3 for 2001, 2003, 2004 and 2005?

4 A. I was not personally involved in that, but I was still on
5 the receiving end as to all the related matters concerning
6 those years.

7 Q. And by the "receiving end," do you mean you received all
8 the documentation each year for each of the price increases at
9 issue?

10 A. That is right.

11 Q. And did you review the internal memos and analyses
12 relating to the price increases for the years 2001, '03, '04
13 and '05?

14 A. That is right. Given that it was our department that was
15 responsible for the conduct of these price matters, all that
16 kind of information has to come to us.

17 Q. All right. And was the process that Ottogi employed in
18 those years, 2001, 2002/'03, 2004 and 2005, as outlined in all
19 the memos that you reviewed and the documentation you received,
20 the same as what you've described for 2007 and 2008?

21 THE COURT: Ms. Sweeney.

22 MS. SWEENEY: Same objection, Your Honor.

23 THE COURT: Overruled.

24 A. That's right. So over time the department responsible for
25 these sorts of price management things would change. However,

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1 the overall processes involved or undertaken remained basically
2 the same.

3 **BY MR. EDELMAN**

4 **Q.** In each of the years that we've discussed where there was
5 a price increase, was there a cost increase in the underlying
6 materials used for ramen?

7 **A.** Yes, there had been cost increases.

8 **Q.** And in each of the years in which Ottogi raised its price
9 that we have been discussing, did Ottogi do an independent
10 analysis of market conditions, competitors, the things you have
11 been testifying to, like you explained to us for 2007 and 2008?

12 **A.** That is right. So Ottogi would independently review,
13 analyze and discuss those things. And we not only differed
14 from the competition in terms of the price, but also the
15 timing.

16 And upon going through such a review, the company would
17 come to decide on a price certain that we believed would be
18 most beneficial to our company in conducting an increase.

19 **Q.** All right. And let's look at Exhibit 817, please.

20 (Witness complied.)

21 **Q.** Is 817 the final Request For Approval for the year 2001?

22 **A.** Yes, that's correct.

23 **MR. EDELMAN:** Offer 817, Your Honor.

24 **MS. SWEENEY:** No objection.

25 **THE COURT:** It's admitted.

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1 (Trial Exhibit 817 received in evidence)

2 **MR. EDELMAN:** Can we publish it briefly?

3 **THE COURT:** Go ahead.

4 (Document displayed)

5 **BY MR. EDELMAN**

6 **Q.** Okay. I'm not going to ask any particular questions about
7 that, Mr. Ku.

8 Let's turn to Exhibit 816, please.

9 (Witness complied.)

10 **Q.** What is 816?

11 **A.** So this is the front page of that package of Request For
12 Approval materials that is submitted for obtaining approval.

13 **MR. EDELMAN:** I will offer 816, Your Honor.

14 **THE COURT:** Any objection?

15 **MS. SWEENEY:** No, your Honor.

16 **THE COURT:** All right. It's admitted.

17 (Trial Exhibit 816 received in evidence)

18 **MR. EDELMAN:** All right. Let's please pop 816 on the
19 screen.

20 (Document displayed)

21 **BY MR. EDELMAN**

22 **Q.** So this is the Proposal Form for the year 2002?

23 **A.** Yes, that's correct.

24 **Q.** Okay. So for purposes of this litigation, and indeed for
25 submissions that Ottogi made to the KFTC when it was conducting

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1 its investigation, were you able to find all of these forms for
2 each of the years between 2000 and 2010?

3 **A.** I tried to look for those.

4 **Q.** Okay. And were there some that you were not able to find
5 in Ottogi's files?

6 **A.** Yes, some of them I was not able to locate.

7 **Q.** Which ones were you not able to locate, Mr. Ku?

8 **A.** So I was unable to find the final report as said to be
9 attached hereto, the one pertaining to 2002 --

10 **Q.** Okay, sorry. 2002?

11 **A.** Right. And for the year 2004 I was not able to find the
12 entire, say, Request For Approval package.

13 **Q.** Okay. So just staying with 2002, since this is the one
14 we've been talking about just now, Exhibit 816.

15 **MR. EDELMAN:** If you could put that on the screen,
16 Jim?

17 (Document displayed)

18 **BY MR. EDELMAN**

19 **Q.** Are you saying you were able to find the Proposal Form,
20 but not the remainder that's referred to at the bottom of the
21 page as the attachment?

22 **MR. BIRKHAUSER:** Objection. Leading.

23 **THE COURT:** Overruled.

24 **A.** That is correct.
25

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1 BY MR. EDELMAN

2 Q. And for 2004, if I understood you correctly, you were not
3 able to find the entire packet, neither the Proposal Form nor
4 the attachment; is that correct?

5 MR. BIRKHAUSER: Same objection.

6 THE COURT: Overruled.

7 A. Right. We tried in vain to locate it.

8 Q. Okay. So look at Exhibit 369, please.

9 THE INTERPRETER: 36, counsel?

10 MR. EDELMAN: 369.

11 (Witness complied.)

12 A. All right.

13 BY MR. EDELMAN

14 Q. Looking for a quick answer so I can get it up to the jury
15 before we talk about its contents. Tell me what this is?

16 A. This is a communique.

17 Q. Is this something that you were involved in drafting in
18 2008?

19 I'm sorry. I misspoke as to the year. In 2004?

20 A. Well, now, so, you know, this sort of a document is
21 something that is used for signing off purposes after there is
22 -- sorry, strike.

23 So this is a document that comes to be once a decision has
24 been made and signed off on as to a price increase. So it is
25 used to inform the various respective departments as to such.

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1 And I also am listed as one of the recipients, but I
2 looked for this in my own files, but was not able to locate it.

3 **Q.** All right. So is this document, Request For Cooperation,
4 something that is regularly created by Ottogi in the normal
5 course of business once a price increase has been approved by
6 the president?

7 **A.** Yes, that's right.

8 **Q.** And is this the Request For Cooperation for 2004?

9 **A.** Yes, that's correct.

10 **MR. EDELMAN:** Offer 369, Your Honor.

11 **THE COURT:** Any objection?

12 **MS. SWEENEY:** No, your Honor.

13 **THE COURT:** All right. It's admitted.

14 (Trial Exhibit 369 received in evidence)

15 (Document displayed)

16 **BY MR. EDELMAN**

17 **Q.** All right. So looking at the screen, you just said a
18 moment ago that this is a document that's created after the
19 president has approved the approval packet; correct?

20 **A.** That is correct.

21 **Q.** So although Ottogi was not able to locate the approval
22 packet for 2004, you did locate this in the files?

23 **A.** Yes, that's correct.

24 **Q.** All right. And this document references an attachment on
25 the second page, if we look at that?

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1 **MR. EDELMAN:** Can we look at Exhibit 766, please? And
2 maybe keep 369 on the left of the screen?

3 (Documents displayed)

4 **BY MR. EDELMAN**

5 **Q.** What is 766?

6 **A.** So it's a document that is -- well, it is the document
7 that is referenced here within this Request For Cooperation
8 communique.

9 **Q.** All right. You have a Request For Cooperation that
10 attaches something called a Ramen Export Price and Consumer
11 Price Increase Details.

12 What's the purpose of transmitting this Request For
13 Cooperation and the attachment within the company once the
14 president has signed off on a price increase?

15 **THE INTERPRETER:** I'm sorry. May the interpreter have
16 that repeated?

17 **MR. EDELMAN:** Yes.

18 **BY MR. EDELMAN**

19 **Q.** So we see the Request For Cooperation, Exhibit 369. We
20 see the Ramen Export Price and Consumer Price Increase Details,
21 Exhibit 766. And the question is: What is the purpose of
22 sending around this Request For Cooperation with the attachment
23 within Ottogi once the president has approved the price
24 increase?

25 **A.** So mind you, it does not say export price here on this

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1 document. It talks about the choolgo price and consumer price.

2 But in any event, so this is something that is circulated
3 as an FYI after the gentleman grants his approval.

4 Q. Thank you for that correction. I was reminded of that by
5 my colleague. I'm looking at an old translation.

6 So your version, the correct version, says ramen choolgo
7 or warehouse price and Consumer Price Increase Details on
8 Exhibit 766; correct?

9 A. Yes, that's correct.

10 Q. Okay. So what I was asking is why is this sent around the
11 company?

12 A. So upon there being an increase as to the choolgo price,
13 this is sent around internally within the company to various
14 relevant departments and if any of those departments find it
15 personally useful, then, you know, this is to be used for -- as
16 their reference.

17 Q. So, Mr. Ku, does -- I know you said you couldn't find the
18 final 2004 packet, but does this price list that gets sent
19 around to the various companies show the same prices that would
20 have been found in the final approval packet that the president
21 signed?

22 A. No. So this is not a document that gets submitted to the
23 CEO. Rather, after the CEO grants his approval on the whole
24 idea, this is something that gets provided to the relevant
25 departments for their heads-up.

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1 **Q.** And this reflects the prices that the CEO approved for
2 2004; correct?

3 **A.** Oh, yes, that's correct.

4 **Q.** Okay. Let's move away from 2004 for the moment and go to
5 Exhibit 644.

6 Is Exhibit 644 a Proposal Form and price product increase
7 details signed off by the CEO for 2005?

8 **A.** Yes. It's the Request For Approval package.

9 **Q.** Okay. Let's put that up on the screen briefly.

10 **THE COURT:** Is that in evidence?

11 **MR. EDELMAN:** I'm sorry, your Honor. I offer 644 into
12 evidence.

13 **THE COURT:** Any objection?

14 **MS. SWEENEY:** No, your Honor.

15 **THE COURT:** All right. It's admitted.

16 (Trial Exhibit 644 received in evidence)

17 **MR. EDELMAN:** And, Jim, take us through the pages?

18 (Document displayed)

19 **BY MR. EDELMAN**

20 **Q.** All right. I'm not going to ask you any particular
21 questions about that one in the interests of time.

22 I'd like to move to a summary exhibit.

23 **MR. EDELMAN:** May I approach, Your Honor?

24 **THE COURT:** You may.

25 **MR. EDELMAN:** All right. Thank you.

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(Whereupon document was tendered to the witness.)

BY MR. EDELMAN

Q. Now, is this a chart that you personally prepared, Mr. Ku?

A. Yes, that's correct.

Q. And tell us what it is -- well, let me ask it this way.

Did you personally prepare this based on your review of the price approval packets and the Request For Cooperation that we've now seen for the years in question where there were price increases?

MR. BIRKHAUSER: Objection. Leading.

THE COURT: Overruled.

A. That is right. I prepared this document based upon the various Requests For Approval documents and the Requests For Cooperation documents.

MR. EDELMAN: Offer 2020 into evidence, Your Honor.

THE COURT: All right. Ms. Sweeney?

MS. SWEENEY: We object to its being admitted into evidence. We have no objection to Mr. Edelman using it as a demonstrative.

THE COURT: All right. So at the moment, ladies and gentlemen, I'm going to conditionally admit this document so that you can review it. There is some questions about accuracy, which will be ironed out at some point before you get the case.

(Trial Exhibit 2020 conditionally received in evidence)

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1 (Document displayed)

2 **BY MR. EDELMAN**

3 **Q.** Mr. Ku, tell us what this chart shows, please?

4 **A.** So it basically shows us two things for the years 2001
5 running through 2010 concerning the changes as to our company's
6 Jin Ramen product, plus a dollar conversion of it.

7 **Q.** Okay. So for each of the price increases that you've
8 explained to the jury, does this show how the price of a bag of
9 Jin Ramen at the choologo price, or what's the warehouse price,
10 went up in that given year?

11 **A.** That is correct.

12 **MR. EDELMAN:** You can put that down.

13 (Document removed from display)

14 **BY MR. EDELMAN**

15 **Q.** Mr. Ku, I'm only going to ask you to do this a couple
16 times today, but I want you to look at the jury when you answer
17 the following question.

18 **A.** All right.

19 **Q.** This is my question: Was Ottogi Korea part of an
20 agreement with other ramen companies to fix or raise the prices
21 of ramen in Korea between 2000 and 2010?

22 **A.** No, we never did anything like that. Ottogi adjusted its
23 price based upon its own independent analysis, review and
24 discussions.

25 **Q.** Is it possible that Ottogi Korea was part of a conspiracy

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1 concerning ramen prices between 2000 and 2010 and you didn't
2 know about it?

3 **A.** Sir, I am the one who has been responsible -- who was
4 responsible from 2007 and thereafter as being a person within
5 the actual department responsible for these sorts of price
6 related matters, as well as the actual hands-on person for
7 price.

8 Even before 2007, I was with said department and the
9 department was responsible for discount matters and so forth,
10 and there cannot have -- it could not have been any collusion
11 that I was unaware of.

12 **Q.** I'm going to hand you a document which has been marked for
13 identification as Trial Exhibit 14.

14 **MR. EDELMAN:** May I approach the witness, Your Honor?

15 **THE COURT:** You may.

16 (Whereupon document was tendered to the witness.)

17 **THE COURT:** Do you have one for me?

18 **MR. EDELMAN:** Yes, your Honor.

19 (Whereupon document was tendered to the Court.)

20 **BY MR. EDELMAN**

21 **Q.** Do you recognize this document, Mr. Ku?

22 **A.** Yes.

23 **Q.** Briefly, can you just tell us what it is?

24 **A.** It's a compilation of the attendees for particular given
25 years who were in attendance at this thing called the Ramen

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1 Conference.

2 Q. Did you prepare this?

3 A. Yes, I created it.

4 Q. All right.

5 MR. EDELMAN: Offer Exhibit 145, Your Honor.

6 THE COURT: Any objection?

7 MS. SWEENEY: No, your Honor.

8 THE COURT: All right. It's admitted. So it's Trial
9 Exhibit 14.

10 (Trial Exhibit 14 received in evidence)

11 MR. EDELMAN: I'm sorry, Trial Exhibit 14. I was
12 looking at the deposition exhibit. Thank you.

13 Can we put it on the screen?

14 (Document displayed)

15 BY MR. EDELMAN

16 Q. Okay. First off, tell us why -- tell the jury why you
17 prepared this document?

18 A. So based upon a request for this material by the defense,
19 I conducted my investigation and put this together.

20 Q. All right. So were you the person at Ottogi Korea who was
21 charged with gathering material for the KFTC when it requested
22 material?

23 A. Yes, I was tasked with that.

24 Q. All right. And you reviewed -- did you review Ottogi's
25 files and speak with people to get the information that you put

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1 in this chart?

2 A. Yes, of course.

3 Q. All right. And what is your understanding of what the
4 Ramen Conference is?

5 A. So speaking with respect to the Ramen Conference, this is
6 something that the Korean National Tax Service, basically the
7 tax authorities on the part of the government, put together.
8 Its purpose is so as to ensure that the middlemen, merchants,
9 if you will, do not conduct business under the table. And so
10 as to -- this is intended to prevent cheating on their taxes.

11 Q. So it's -- the Ramen Conference is a conference that is
12 put together by the government to ensure compliance with tax
13 laws; is that accurate?

14 A. Yes, that's correct.

15 Q. All right. You would look at Exhibit 673 in your
16 notebook, please?

17 (Witness complied.)

18 A. All right.

19 Q. Can you tell us what 673 is?

20 A. It's a document sent to the below-listed recipients by the
21 Korean National Tax Service.

22 Q. And is this something that you are familiar with from the
23 work you did in your investigation on the Ramen Conference for
24 the KFTC?

25 A. Yes, that's correct.

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1 Q. And is this a document that Ottogi Korea maintains in the
2 normal course of business?

3 A. Yes, that's correct.

4 MR. EDELMAN: Offer 673, Your Honor.

5 THE COURT: Any objection?

6 MS. SWEENEY: Foundation, Your Honor.

7 THE COURT: Overruled. It will be admitted.

8 (Trial Exhibit 673 received in evidence).

9 MR. EDELMAN: All right. Let's look at Exhibit 673,
10 please.

11 (Document displayed)

12 BY MR. EDELMAN

13 Q. And tell us what this document is, please?

14 A. So this is an official document sent by the Korean
15 National Tax Service to various companies thanking them,
16 thanking each of them for helping to maintain order in
17 transactions. And it further asks for their continuous, say,
18 cooperation going forward.

19 Q. Okay. I want to direct your attention to the small print
20 beneath "Commissioner of the National Tax Service."

21 MR. EDELMAN: And ask, Jim, if we could below that
22 you, please?

23 (Document enlarged)

24 A. All right.

25

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1 **BY MR. EDELMAN**

2 **Q.** Okay. So it says that the recipients are:

3 "The Chairman" -- I can't wait for the translation
4 on this -- "for the Transaction Order Normalization
5 Conference for refreshing drinks, cosmetics, toilet paper,
6 sanitary products, confectionaries, ice cream, marine food
7 products, electronic products, paints, ink, plywood,
8 timber, meat, ramen, edible oil, oil and fat, shoes, paper
9 cups, spices and pharmaceutical products."

10 **A.** Yes.

11 **Q.** Does the Korean government require all of these industries
12 to hold their own conferences to ensure that appropriate taxes
13 are being paid?

14 **THE COURT:** Ms. Sweeney.

15 **MS. SWEENEY:** Objection. Foundation. Relevance as to
16 timeframe.

17 **THE COURT:** Sustained.

18 **MR. EDELMAN:** All right.

19 **BY MR. EDELMAN**

20 **Q.** Let me ask it a little differently. Is it your
21 understanding, Mr. Ku, that the -- for the years in question
22 when you did this investigation, that there were conferences
23 for industries other than just ramen?

24 **A.** Yes, that's right.

25 **Q.** All right. So let's go back to Exhibit -- Trial

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1 Exhibit 14.

2 (Document displayed)

3 Q. In the year 2001, from your investigation who attended the
4 Ramen Conference on behalf of Ottogi?

5 A. For the year 2000 it was a Mr. Geun-Ho Choi.

6 Q. Who is Mr. Geun-Ho Choi?

7 A. It was somebody charged with sales.

8 Q. Did he have pricing authority in 2001?

9 MS. SWEENEY: Objection. Foundation.

10 THE COURT: Sustained.

11 BY MR. EDELMAN

12 Q. I'm sorry. Repeat the department that he was in?

13 A. It was a sales related department.

14 Q. And did his department -- are you familiar -- you are
15 familiar with the department he was in?

16 A. Yes, I know about it.

17 Q. Did his department have price setting authority for Ottogi
18 Korea in 2001?

19 A. No. It was a sales related department.

20 Q. Was Mr. Geun-Ho Choi in that same department in -- well,
21 let me ask it differently.

22 Was Mr. Geun-Ho Choi ever in a department in Ottogi Korea
23 that had price setting authority between 2000 and 2010?

24 A. No.

25 Q. So from the department that he was in 2001 would he have

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1 been up to speed on Ottogi's price strategy for ramen that
2 year?

3 **THE COURT:** Sustained. No foundation.

4 **BY MR. EDELMAN**

5 **Q.** Was there another person who attended the Ramen Conference
6 in 2001?

7 **A.** It is possible that somebody referred to as the secretary
8 may have been in attendance, but it's not something we were
9 able to verify.

10 **Q.** All right. But it would have been somebody beneath
11 Mr. Choi?

12 **A.** That's right. The person I have in mind is somebody at a
13 lower rank than Mr. Choi.

14 **Q.** All right.

15 **MR. BIRKHAUSER:** Objection. Foundation.

16 **THE COURT:** Overruled. He did -- overruled.

17 **MR. EDELMAN:** Okay.

18 **BY MR. EDELMAN**

19 **Q.** Okay. Was that person in your department?

20 **A.** No.

21 **Q.** Did Ottogi Korea send anyone to the Ramen Conference in
22 2001 that had pricing authority?

23 **THE COURT:** Sustained. No foundation.

24 **BY MR. EDELMAN**

25 **Q.** Did you -- did your department ever send anyone to the

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1 Ramen Conference -- did your department send anyone to the
2 Ramen Conference in 2001 who had pricing authority?

3 **THE COURT:** Ms. Sweeney.

4 **MS. SWEENEY:** Objection. Foundation, given the
5 department that he was in at the time.

6 **THE COURT:** Sustained.

7 **BY MR. EDELMAN**

8 **Q.** Did you ever hear from anyone at Ottogi that there was any
9 agreement at a Ramen Conference in 2001 to set prices with
10 competitors?

11 **A.** No. I've never heard anything like that.

12 **Q.** Okay. I want to quickly ask you about information
13 exchange.

14 Did you ever exchange confidential non-public pricing
15 information with Nongshim or any of Ottogi Korea's competitors
16 in Korea?

17 **A.** No, I never did.

18 **Q.** Let's turn to the KFTC investigation. Was Ottogi Korea
19 investigated by the KFTC for price fixing?

20 **A.** Yes, it was.

21 **Q.** Tell the jury what the KFTC is.

22 **A.** The KFTC in Korea is charged with implementing the rules
23 concerning fair trade. So they, along with the Prosecutor
24 General's Office plus the National Tax Service, they, the three
25 bodies, constitute the top-most investigatory bodies within

1 Korea.

2 Q. Is it a powerful agency?

3 A. That is right.

4 Q. What was your understanding of the scope of the KFTC's
5 investigation?

6 A. I understand it as having been concerning the overall
7 scope of the pertinent fair trade laws.

8 Q. Within domestic Korea?

9 A. That's correct.

10 Q. All right. And how did you first learn about the
11 investigation?

12 A. They came in and started investigating us unannounced on
13 June the 3rd, 2008.

14 Q. Announced or unannounced?

15 THE INTERPRETER: Unannounced, by the interpreter.

16 MR. EDELMAN: Unannounced.

17 THE INTERPRETER: Yeah.

18 BY MR. EDELMAN

19 Q. Was it a total surprise?

20 A. Yes. They basically raided us without any prior
21 announcement.

22 Q. Did you have a lawyer there?

23 A. No, we didn't.

24 Q. Describe for the jury what happened?

25 A. So it was June the 3rd in 2008 and it was just like any

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1 other ordinary workday. We were just working and it was a
2 little past 9:00 and about 10:00 -- around 10:00 or so
3 investigators from the KFTC just came and raided us
4 unannounced.

5 So at that time our office was, I'd say, a little wider
6 than this courtroom here and there were no cubicles. It was
7 all open. The entryway was about yea big over here and there
8 was only one entryway.

9 So these ten investigators come in. They say, Cease what
10 you're doing. Just save all your work on your computer and
11 move away from your computer. And then they said, As of this
12 point in time we are going to be investigating you as to the
13 overall laws and regulations pertaining to fair trade.

14 And then they started spreading around within each of our
15 departments and started going through the cabinets, the desks,
16 the computers and such.

17 **THE COURT:** Mr. Edelman, let's proceed by questions
18 and answers rather than narratives.

19 **MR. EDELMAN:** Okay, Your Honor. Sure.

20 **BY MR. EDELMAN**

21 **Q.** So do they lock the doors and tell everybody not to leave?

22 **A.** Yes. As soon as they came in, they locked the door and
23 there was one guy standing guard there and said, Nobody gets to
24 leave.

25 **Q.** Did they access your computers and copy the contents?

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1 **A.** So as I mentioned just a moment ago, they went through
2 everything within our cabinets, went through everything within
3 our desk drawers and on top of the desks, and then they used a
4 USB sort of thing that they brought with them and connected it
5 to our computers and installed something.

6 It was as though it were a scene from a movie. And after
7 doing so, they basically continued to basically investigate or
8 go through people's computers.

9 **Q.** How long were they there?

10 **A.** So they came there a little after 9:00 and left at
11 5:00 p.m.

12 **Q.** Did they give you any instructions before they left?

13 **A.** No. There were no instructions or anything, but they did
14 make copies of all our documents, made copies of our computers.
15 And, in fact, a lot of the inside contents of the computers
16 they actually printed out -- printed them out right then and
17 there as hard copies and took quite a lot of things back with
18 them.

19 **Q.** Did they tell you you're obligated to preserve files,
20 documents, emails, anything of that nature?

21 **A.** No. There was no word like that, nothing.

22 **Q.** All right. So what's the next thing that happened with
23 respect to the KFTC after they investigated you in -- they did
24 their raid in June of 2008?

25 **A.** So about a month or so thereafter, they sent over some

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1 sort of a document asking for us to provide answers on.

2 **Q.** Look at Exhibit 17, please.

3 (Witness complied.)

4 **MR. EDELMAN:** Your Honor, this has already been
5 conditionally admitted.

6 So let's put up Exhibit 17 on the screen, please.

7 (Document displayed)

8 **BY MR. EDELMAN**

9 **Q.** And let me take you back to Page 18192-T, or for you, Mr.
10 Ku, I think it's -- well, it's the same number, 18192.

11 **A.** All right.

12 **Q.** Is this the list of questions that you received from the
13 KFTC?

14 **A.** Yes, it's a questionnaire. And there beneath I checked
15 off a few things.

16 **Q.** So wherever we see an arrow with the bolded print that
17 references a part of the company, is that your writing?

18 **A.** Yes. I wrote those in.

19 **Q.** So what were you doing in listing these various parts of
20 the company? What was your purpose?

21 **A.** So you see a list of questions here, not all of which my
22 department could answer. So I wrote down the relevant
23 departments which could answer.

24 **Q.** Were you the person that was spearheading the effort to
25 respond to the KFTC's inquiry?

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1 **A.** It was pretty much me who handled it.

2 **Q.** Did you ask them to be -- did you understand them to be
3 asking you for documents and things?

4 **A.** Well, the questions are asking us to provide answers and
5 so, but some of the questions were requesting the submission of
6 material.

7 **Q.** Did you have a conversation with anyone at the KFTC,
8 either by phone or otherwise, where you tried to understand
9 exactly what they were asking from you?

10 **MS. SWEENEY:** Objection. He's asking for hearsay.

11 **THE COURT:** Overruled. You can answer.

12 **A.** I'm sorry. The question was?

13 **BY MR. EDELMAN**

14 **Q.** Well, the question was just if you had a conversation with
15 the KFTC about what they were asking for?

16 **A.** Yes. So as I was going through these questions with the
17 questionnaire, whatever I had questions about, I often
18 discussed that with the KFTC folks.

19 **Q.** All right. And what did they tell you that they wanted
20 from you in this conversation or conversations?

21 **MS. SWEENEY:** Objection. Hearsay.

22 **THE COURT:** All right. Ladies and gentlemen, when the
23 witness is describing what the KFTC person may have told him,
24 that's not admitted for the truth. It's admitted for how he
25 took that information and did whatever he did. This is his

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1 testimony.

2 **A.** So here they were basically asking for us to put certain
3 materials together and send it back their way. Additionally,
4 they were also wanting to see that -- those series of Requests
5 For Approval packages.

6 **Q.** The Request For Approval packages that we went over
7 earlier?

8 **A.** That is correct.

9 **Q.** And remind the jury which ones you were able to find and
10 which ones you were not able to find?

11 **A.** We were able to locate the years '07 and '08 for which our
12 department was responsible, as were we with respect to 2005.

13 However, the other years that we spoke about earlier,
14 namely, '01, '02 and '04, we were not able to find those.

15 **Q.** Okay. And for the years '01, '02 and '04, was -- are you
16 saying it was a different department that prepared these
17 approval packets?

18 **A.** That's right. It was a different department and so we
19 asked that department to try to locate those, but in certain
20 cases the department was no longer there. So we were basically
21 unable to locate those.

22 **Q.** Okay. So did you tell the KFTC that you were able to find
23 the final approval packets for the years where your department
24 was responsible, but you couldn't find them for the earlier
25 years?

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1 **MS. SWEENEY:** Objection. Hearsay.

2 **THE COURT:** Overruled.

3 **A.** I did, in that I said for '01, '02 and '04 we were not
4 able to locate those documents.

5 **BY MR. EDELMAN**

6 **Q.** Okay. And what did the KFTC investigator say in response?

7 **MS. SWEENEY:** Hearsay. Objection, Your Honor.

8 **THE COURT:** Again, this is -- overruled. It's
9 admitted not for the truth of what Mr. Ku says that the KFTC
10 told him, but for why he ended up doing what he did.

11 **A.** So when I informed the KFTC investigator about that over
12 the phone, he said, Look, this being 2008 and '01 and '02, I
13 understand it's been awhile. So that I understand. However,
14 2004, that's relatively recent, so you must come up with that,
15 he said.

16 So for the time being I said, Okay, I'll try my best
17 again, and hung up on the phone.

18 **BY MR. EDELMAN**

19 **Q.** And did you go back and look again?

20 **A.** Yes, I did, but I was just simply unable to locate the
21 documents for 2004.

22 **Q.** So let's just go one at a time. So what did you do then?

23 **A.** I placed another call to the KFTC. Told them, Look, I
24 looked but wasn't able to find it.

25 **Q.** And what did the KFTC investigator say?

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1 **MS. SWEENEY:** Same objection, Your Honor. Hearsay.

2 **THE COURT:** Again, admitted not for the truth of the
3 matter of what the KFTC person said.

4 **A.** Still you must submit that no matter what, says he.

5 **BY MR. EDELMAN**

6 **Q.** Even though you couldn't find it and you had gone back and
7 looked again?

8 **A.** That's right.

9 **Q.** So what did you say to the investigator when he told you
10 you simply had to have it?

11 **A.** I said to him, How can I submit what I don't have?

12 **Q.** What did the investigator say?

13 **THE COURT:** Same objection and same ruling. It's not
14 offered for the truth.

15 **A.** Still, you must. He repeated the same thing.

16 **BY MR. EDELMAN**

17 **Q.** What did you say?

18 **A.** I said, We don't have it. I can't. I continued to say
19 that.

20 **Q.** Did this go back and forth for awhile like this?

21 **A.** Yes. The phone conversation lasted for quite awhile.

22 **Q.** And how did you guys resolve the stalemate?

23 **THE COURT:** Ms. Sweeney.

24 **MS. SWEENEY:** Objection to the extent it's calling for
25 hearsay from the KFTC.

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1 **THE COURT:** Same ruling. It's not offered for the
2 truth.

3 **A.** So this went on for quite some time. I say, We don't have
4 it. We can't submit it.

5 The guy says, You must submit it. And this goes back and
6 forth.

7 I say, What do you want us to do? Reconstruct it and
8 submit it?

9 He goes, Yes.

10 **BY MR. EDELMAN**

11 **Q.** So is that what you ended up doing?

12 **A.** Yeah. So the investigator said, No matter what you must
13 submit it.

14 **Q.** Do you remember the name of this investigator?

15 **A.** No, I can't quite recall. It's just been way too long.
16 But I recall that he was a man.

17 **Q.** Tell us what you did then after you were told to
18 reconstruct the memo?

19 **A.** So I was able to find something from within the marketing
20 office, which in the day was handling the matter. And this was
21 the -- this was an interim report.

22 **Q.** Like the interim reports we have been looking at in --
23 earlier in your testimony?

24 **A.** Yes, but not something so neatly compiled. But, yeah, an
25 interim report.

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1 **Q.** Look at Exhibit 976, please.

2 (Witness complied.)

3 **Q.** I'm going to start at the end of the story, Mr. Ku, on
4 this document and then work backwards.

5 Tell us what 976 is.

6 **A.** This appears to be a final report, one that I had
7 submitted to the KFTC.

8 **Q.** Is this the report that you recreated after these
9 discussions that you've just described?

10 **A.** Yes, that's right.

11 **MR. EDELMAN:** Offer 976, your Honor.

12 **THE COURT:** Any objection?

13 **MS. SWEENEY:** No, your Honor.

14 **THE COURT:** It's admitted.

15 (Trial Exhibit 976 received in evidence).

16 **MR. EDELMAN:** Okay. Let's look at 976.

17 (Document displayed)

18 **BY MR. EDELMAN**

19 **Q.** So it's dated January 5th, 2004; correct?

20 **A.** Yes, that's correct.

21 **Q.** But is this the one you created in 2008, as you have been
22 explaining?

23 **A.** That's right. This is my reconstruction.

24 **Q.** And did you create this from a draft report that you found
25 in the files?

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1 **A.** That is right. This is a document that I came up with
2 based upon that other document.

3 **Q.** And just quickly, in the upper right-hand corner the name
4 Jae-Hwan Jong, J-O-N-G, who is that?

5 **A.** That's an employee who used to work within the -- within
6 Marketing Team 3.

7 **Q.** And did you speak to him about this document that you were
8 recreating at the time you were doing so?

9 **A.** Yes, I did.

10 **Q.** Did he work in your office?

11 **A.** Well, he offices within the same office premises as mine.

12 **Q.** Okay. And you showed him this?

13 **A.** I did.

14 **Q.** Did you ask him to review it and approve it as what you
15 both thought a memo from 2004, final memo would have looked
16 like?

17 **MR. BIRKHAUSER:** Objection. Leading.

18 **THE COURT:** Sustained.

19 **BY MR. EDELMAN**

20 **Q.** What did you ask Mr. Jong to do when you showed it to him?

21 **A.** So I told him that whereas there ought to have been this
22 document within Marketing Team 3, that this is a reconstruction
23 of what you folks seem to have misplaced. If after your review
24 of this, this strikes you as being something that comports with
25 or something that is similar to what you recall, then would you

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1 kindly place your chop on it.

2 Q. And what did he say?

3 MS. SWEENEY: Objection. Hearsay.

4 THE COURT: Sustained.

5 BY MR. EDELMAN

6 Q. What did he do in response to that conversation?

7 A. He says it seems similar and then he placed his chop on
8 it.

9 Q. All right. So let's look at Exhibit 359, please.

10 (Witness complied.)

11 Q. Do you have 359 in front of you?

12 A. Yes.

13 Q. All right.

14 MR. EDELMAN: So let's -- it's already been
15 conditionally admitted, your Honor, so let's please display
16 that.

17 BY MR. EDELMAN

18 Q. Can you tell us what 359 is?

19 MR. EDELMAN: Let's look at the bigger picture of it,
20 Jim, not zoomed in.

21 (Document displayed)

22 MR. EDELMAN: Thank you.

23 A. It's an email that I sent to one of my subordinates,
24 Mr. Ho-Joon Kang.

25

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1 BY MR. EDELMAN

2 Q. Okay. And what is the attachment?

3 A. That's an interim memo as received from the marketing
4 office.

5 Q. All right. And did you use this interim memo to create
6 the reconstruction of the final memo that you gave to the KFTC?

7 A. Yes. So I came up with the closest approximation as a
8 reconstruction of the final report and submitted that.

9 MR. EDELMAN: Jim, let's just go through -- quickly
10 just page through page two, so the jury can see it, page three,
11 page four, page five, page six.

12 That's it.

13 (Document displayed)

14 BY MR. EDELMAN

15 Q. So why not just submit Exhibit 359 to the KFTC instead of
16 reconstructing the final memo that you just testified to?

17 A. The KFTC was asking for the final report. And as for this
18 document, I was thinking that they had already had it in their
19 possession.

20 Q. Why were you thinking that?

21 A. That's because when they came and investigated us and went
22 through the cabinet, et cetera, et cetera, or our computers, I
23 thought they basically had this document already.

24 MR. EDELMAN: Jim, could you pull it up again, please,
25 359?

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1 (Document displayed)

2 **BY MR. EDELMAN**

3 **Q.** Is this a final report?

4 **A.** No. This is not the final report.

5 **Q.** What is different about this document than the final
6 report or the final reports that the jury has been seeing this
7 morning?

8 **A.** So the most important thing is the fact that the price
9 itself, which is the most important thing, there is an error
10 here. And when you look way at the end, the conclusion
11 portion, it says let us not raise the price. Therefore, this
12 is not the final report.

13 **MR. EDELMAN:** Let's look -- leave that first page up,
14 Jim, please. Move it to the left and let's pull up the last
15 page.

16 (Documents displayed)

17 **BY MR. EDELMAN**

18 **Q.** Are we looking at the right page, where you're saying it
19 does not recommend a price increase?

20 **A.** So based upon the document that I have before me in
21 Korean, it basically is the portion that sets forth --

22 **MR. EDELMAN:** Jim, pull up section six, please. "For
23 the time being" in the bottom, highlight those bottom two
24 paragraphs?

25 (Document displayed)

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1 **A.** "It seems best that we postpone any price increase to
2 whatever extent that we are able to hold off," dah, dah, dah.
3 That portion.

4 **Q.** Okay. So you're saying that wasn't the final report
5 because it recommended against the price increase?

6 **A.** That is correct.

7 **Q.** Any other reasons why Exhibit 359 would not have been a
8 final report?

9 **A.** So you had seen earlier the final report for the years
10 2007 and 2008. A final report is not going to look -- is not
11 going to be this long and detailed. They typically are in a
12 simple fashion, just entailing the timing, the details of the
13 increase and the cause of such. And the reason why is because
14 CEOs do not have the luxury of time to look through something
15 this detailed.

16 And these sorts of details about the market and
17 circumstances, the pros and cons of this, that, these are
18 things that get discussed at the interim level, at the level --
19 at the stage where they make a determination as to price.

20 Further, the author listed here is a Kang-Hoon Lee, who as
21 of this point in time had already decided was going to leave
22 the care of the company and, furthermore, he was a rather low
23 echelon type of employee such that it's unlikely that he would
24 have been the guy putting together the final report.

25 **MR. EDELMAN:** Jim, would you put up 976 again, the

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1 final, the recreation Mr. Ku testified to?

2 And leave up Exhibit 359. Put one next to the other. Why
3 don't you -- yeah, that's fine.

4 Okay. So let's blow up the "Purpose" on 359.

5 (Documents displayed)

6 **BY MR. EDELMAN**

7 **Q.** So in an interim report it talks about a price increase
8 becoming inevitable on account of Nongshim's price increase.

9 Do you see that? 359?

10 **A.** Yes.

11 **Q.** Do you understand this to be saying that because Nongshim
12 has raised its price, Ottogi has to?

13 **A.** No.

14 **Q.** Why not?

15 **A.** My take on this is that seeing as how Nongshim has been
16 granted the go-ahead from the Korean government to increase the
17 price, that serves as the impetus for us also to make a
18 determination one way or another as to whether to raise or not
19 raise, in view of how the underlying costs for us have
20 increased also.

21 **Q.** All right. So let's look at the "Purpose" on the
22 recreated memo, Exhibit 976.

23 Now, that "Purpose" doesn't say anything about Nongshim,
24 does it?

25 **A.** That is right, it does not.

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1 Q. Why not?

2 A. As I mentioned earlier, the agreement with the KFTC was
3 that, okay, we're going to try to reconstruct and submit
4 something that is as closely -- as closely approximates what
5 would have been the final report, but as you previously saw in
6 the cases of 2007 and 2008, this is put in a very concise form,
7 as would a final report have been.

8 So anything that includes details about the market
9 circumstances and reference about the competition, that is
10 something that you would come across within an interim report,
11 but not in a final report.

12 Q. Mr. Ku, in creating this document, Exhibit 976, this
13 approximation or recreation, were you trying to trick the KFTC
14 into thinking that that was the real memo from 2004?

15 A. No, sir. I had no intention whatsoever of tricking the
16 KFTC authorities. This was the very first time I was
17 undergoing something like this myself and the KFTC put quite a
18 bit of pressure on me, yeah. I was scared and I felt that I
19 had no choice but to do something like this.

20 So we, they and I, discussed this and the KFTC agreed
21 about this. And even while I was doing this, I was feeling
22 uncomfortable.

23 Q. Did you talk to anyone at the time about the discomfort
24 you were feeling about the situation?

25 A. Yes. I spoke about this with my departmental head.

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1 **Q.** And what did the two of you talk about?

2 **A.** I said, sir --

3 **THE COURT:** Hold on just a second.

4 **MS. SWEENEY:** Objection. Calls for hearsay.

5 **THE COURT:** Sustained.

6 **MR. EDELMAN:** Your Honor, it's not being offered for
7 the truth of the matter asserted.

8 **THE COURT:** There are some things where that works and
9 some things where it doesn't. It doesn't work here.

10 **MR. EDELMAN:** Very well.

11 **BY MR. EDELMAN**

12 **Q.** Mr. Ku, did you seek to discuss the situation with your
13 superior at Ottogi before proceeding with the recreation of the
14 memo that the KFTC had asked for?

15 **A.** Yes. I spoke about this with my boss at the time, within
16 the department.

17 **Q.** And did you conclude that you had no choice but to do what
18 the KFTC was requesting?

19 **THE COURT:** Ms. Sweeney.

20 **MS. SWEENEY:** Objection. Leading.

21 **THE COURT:** Sustained.

22 **BY MR. EDELMAN**

23 **Q.** What did you conclude after your conversation with your
24 superior?

25 **A.** So my boss on his part said that it seems -- seeing as how

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1 the KFTC is so adamant about it, we have no choice but to
2 reconstruct it and submit it to them. And that's what I also
3 thought at that time and so I came up with the reconstruction.

4 **THE COURT:** So the jury will disregard anything that
5 Mr. Ku said with respect to what his boss may or may not have
6 told him.

7 **BY MR. EDELMAN:**

8 **Q.** Mr. Ku, do you understand that you have been accused in
9 this case of purposefully attempting to deceive the KFTC
10 through your recreation of the 2004 final packet?

11 **THE COURT:** Ms. Sweeney.

12 **MS. SWEENEY:** Objection. Improper argument.

13 **THE COURT:** It is argumentative. Sustained.

14 **BY MR. EDELMAN:**

15 **Q.** Has it been important to you, Mr. Ku, to come from Korea
16 to testify in this case about accusations made against you?

17 **THE COURT:** Sustained. Argumentative and leading.

18 **BY MR. EDELMAN:**

19 **Q.** Has it been important to you, Mr. Ku, to come testify in
20 this case?

21 **A.** Yes. As for me, it's important.

22 **Q.** Please look at the jury and tell them why.

23 **A.** I wanted to clear my name. And I had no intention
24 whatsoever of misleading the KFTC authorities. I wanted to
25 come here, look at you in the face and be able to explain

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1 things to you and clear my name.

2 **Q.** What happened after you submitted Ottogi Korea's response
3 to the KFTC's request for information in 2008?

4 **THE INTERPRETER:** I'm sorry, Your Honor. May the
5 interpreter have that repeated?

6 (The question read back by the court reporter)

7 **THE WITNESS:** So there was yet another on-site
8 investigation that was conducted in January of 2010.

9 **THE COURT:** Would this be a good time to break?

10 **MR. EDELMAN:** Certainly, Your Honor.

11 **THE COURT:** Ladies and gentlemen, we'll take our
12 second break. Please remember the admonitions.

13 (Recess taken at 11:56 a.m.)

14 (Proceedings resumed at 12:10 p.m.).

15 (The following proceedings were held in open court, outside the
16 presence of the jury:)

17 **MR. EDELMAN:** Your Honor, can we raise one issue with
18 you before the jury comes in?

19 **THE COURT:** What's the issue?

20 **MR. EDELMAN:** I sought to meet and confer with counsel
21 before the jury came in. There was a line of cross-examination
22 of one of the Nongshim witnesses, Hak-Sung Kim, by Mr. Ruf
23 where he was asked: Let's talk about your market share. You
24 had 70 percent, and your market share has gone down quite a bit
25 since 2010. And he says: Yes. And Mr. Ruf asks: And that's

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1 a result of the fact that your competition is competing with
2 you more effectively? He said: Right.

3 I think the line of questioning is set up for oral
4 argument that after the conspiracy ended, the market shares of
5 the respective companies changed. And so I had intended very
6 briefly to elicit from my witness the fact that they came out
7 with a major hit product which resulted in a big uptick in
8 their market share.

9 And I'm not sure whether -- counsel hasn't decided whether
10 they're going to object to it or not, but I want to be able to
11 have something in the record to respond to the argument if
12 they're going to make it that that's why the market share
13 changed after 2010. If there isn't going to be any argument
14 about a change in market share after the end of the conspiracy
15 period, I don't need to cover it. But I think they are going
16 to argue it.

17 **THE COURT:** Ms. Sweeney.

18 **MS. SWEENEY:** We were just alerted that Mr. Edelman
19 might get into some issues beyond the class period, but he
20 hadn't specified how or whether Mr. Ku has any kind of
21 foundation. So we were reserving our rights to object as the
22 evidence is elicited.

23 **THE COURT:** Okay. So let's go ahead and see what
24 happens. I'm not seeing the relevance of it. I understand
25 what your arguing Mr. Edelman, but it may be that the -- we'll

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1 just see what the -- whether the plaintiffs object. And if
2 they do, I'll rule.

3 **MR. EDELMAN:** Okay, Your Honor. Thank you.

4 **MR. BIRKHAUSER:** Your Honor --

5 **THE COURT:** Hang on.

6 **MR. BIRKHAUSER:** I would just like to note for the
7 record the witness was present for that conversation.

8 **THE COURT:** He knows the answer to that question, I
9 suspect.

10 **MS. YU:** And the witness doesn't speak English.

11 **MR. EDELMAN:** There is that.

12 NOTE: the jury entering the courtroom.

13 **THE COURT:** All right. Please be seated, everybody.
14 Mr. Edelman, go ahead.

15 **MR. EDELMAN:** Thank you, Your Honor.

16 **BY MR. EDELMAN:**

17 **Q.** Mr. Ku, before the break I had just asked you the question
18 after you submitted this information to the KFTC in 2008, what
19 happened next?

20 **A.** So they made another on-site investigation in January of
21 2010.

22 **Q.** All right. And I don't want to get into all the details
23 again. But was it just like the last one that you've already
24 described?

25 **A.** Yes. The circumstances and method of investigation are

1 pretty much the same.

2 Q. And did they say anything in particular to you during that
3 investigation about Ottogi's prices?

4 MS. SWEENEY: Objection, hearsay.

5 THE COURT: Sustained.

6 BY MR. EDELMAN:

7 Q. As a result of the conversation -- of any conversation
8 with the KFTC when they were there doing their investigation --
9 did Ottogi take any action with respect to its prices?

10 A. So upon undergoing that investigation of January 2010 by
11 the KFTC, we lowered our prices.

12 Q. And did you do that in response to what the investigators
13 said to you when they were on-site for their investigation in
14 2010?

15 MS. SWEENEY: Objection. Hearsay.

16 THE COURT: I'm going to sustain it on another ground.
17 Leading. Ask him direct questions.

18 BY MR. EDELMAN:

19 Q. Why did you --

20 MR. EDELMAN: I was trying not to elicit hearsay.
21 That's why I didn't ask it that way.

22 Q. Why did you drop your prices after the KFTC raid in 2010?

23 A. So around the end of 2008 -- or actually, I mean, the end
24 of 2009 -- the price of flour went down somewhat. And on this
25 occasion the KFTC folks were saying, Hey, how come you guys are

1 not lowering your price, the price of ramen, when the price of
2 -- the cost of flour has gone down? They kept saying that as
3 they were going around.

4 **Q.** And what did you do in response to that?

5 **A.** Quick adjustment as to the last answer.

6 So they kept going around saying that, and that they're
7 curious as to why we're not lowering our price.

8 This answer:

9 And so they kept saying, So we're curious as to why you
10 folks are not lowering your price on ramen. So then I caught
11 on to the fact that, oh, these guys want us to lower our price.

12 **Q.** And what did you do?

13 **A.** So seeing as how it seemed to us that they wanted to see
14 us lowering the price our ramen, I said to them that, Okay, we
15 will positively look into this and see if, in fact, the cost of
16 wheat flour has gone down to see if it's feasible for us to
17 lower our price.

18 So upon that the KFTC said, we are also out there
19 investigating Samyang as well as Nongshim. And as far as the
20 government is concerned, whoever is the company to lower their
21 prices earlier they're going to be in the government's favor.
22 So if at all possible, you probably would do well to lower your
23 price early on.

24 **Q.** And did Ottogi Korea lower its price in response to that
25 from the KFTC?

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1 **A.** We did, as of February 4.

2 **Q.** February 4, 200 --

3 **A.** 2010.

4 **Q.** 2010. Thank you. All right.

5 Now, during the second on-site visit, Mr. Ku, we talked
6 earlier about the recreated memo. And the memo, you recreated
7 it from for the years 2004.

8 Did you still have those memos on your computer when the
9 KFTC came in the second time in 2010?

10 **A.** Yes. It was there within my computer at the time.

11 **Q.** And in 2010 during the raid, did the KFTC copy your
12 computer and its contents again?

13 **A.** Yes. They came and obtained a copy of my computer
14 contents as also -- as they did also with respect to Mr. Doh's
15 computer. And as in the previous instance, they also made hard
16 copies of documents that were there.

17 **Q.** What happened next with respect to the KFTC they left in
18 2010?

19 **A.** So on that occasion when they came, and as they were
20 leaving they asked for a copy of the document that I'd come up
21 with back in July of 2008. So I also gave them one of those.

22 **Q.** Okay. And then after they left, what was the next thing
23 that happened with respect to the KFTC?

24 **A.** So after that, and after they went through my final report
25 material for the year 2008, they said, We see that the final

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1 reports for the years 2001 and 2002 are not here. Please
2 submit those.

3 Q. This was a phone call?

4 A. That's right. That was by telephone that they sent word.

5 Q. Was this the same investigator that you had in 2008? Or a
6 different one?

7 A. It was somebody else.

8 Q. Do you remember his name?

9 A. No, not quite. Not this gentleman, either.

10 Q. All right. So what did you say when they said that they
11 want copies of the final 2001 and 2002 approval packets?

12 A. I told them that you folks at the KFTC said that you
13 understand that we don't have it -- this is back in 2008 -- and
14 so they excused us. And so I told him about that.

15 Q. You're referring back to the conversation you had in 2008
16 when you told them you didn't have 2001 and 2002?

17 A. That's right. So due to that we weren't able to submit it
18 back then, is what I said.

19 Q. Okay. And back then they were okay with your not having
20 it because it was so far back, right?

21 A. That's correct.

22 Q. But this time they were insisting on it?

23 A. And so here we're dealing with a different guy, and this
24 guy is saying, Please submit those.

25 Q. What did you say?

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1 **A.** I said that back then we were not able to locate those,
2 but we will try to look for them again.

3 **Q.** And briefly describe for the jury the process that you
4 went through.

5 **A.** So we, again, tried to look for it. And, in fact, we were
6 able to locate the documents for 2001. And as for 2002, we
7 were not able to locate the entire request for approval
8 package, but only the front page thereof. The proposal form.

9 **Q.** Okay.

10 **A.** Without the attachments.

11 **Q.** Without going through all of the back and forth with the
12 KFTC, can you summarize the gist of your conversation with
13 them?

14 **MS. SWEENEY:** Object to the extent it calls for
15 hearsay.

16 **THE COURT:** Again, ladies and gentlemen, whatever
17 Mr. Ku says the KFTC person said is not admitted for its truth,
18 but it's admitted to show what his story is about how he dealt
19 with that -- the situation.

20 **THE WITNESS:** So when I informed this investigator
21 that we were able to locate all of the 2001 documentation but
22 only part of 2002 documentation, he said that, You must submit
23 the final approval memo also for 2002.

24 And upon that I said, As in the previous instance, look, I
25 cannot submit that because we don't have it. And this

1 gentleman, too, said, You must.

2 And so in view of how they were adamant no matter what I
3 would tell them that we must submit this, I said, okay,
4 thinking back, reflecting back on 2008 I said to him: Look,
5 back then in 2008 since we couldn't come up with the 2004
6 document we had to recreate it and submit it. Is that what you
7 want me to do here in this instance also? Something that
8 approximates the final report?

9 **BY MR. EDELMAN:**

10 **Q.** And what did he say?

11 **MS. SWEENEY:** Objection, Your Honor.

12 **THE COURT:** Same ruling. You can answer.

13 **THE WITNESS:** Do that, if you must.

14 **BY MR. EDELMAN:**

15 **Q.** And look at Exhibit 357.

16 **A.** All right.

17 **Q.** That is the memo that you submitted to the KFTC for 2002
18 year?

19 **A.** Yes, that's correct.

20 **Q.** All right. Last question. For 2005 were you able to find
21 the final approval packet in your files.

22 **A.** Now, for that, we obtained that through the marketing
23 office and submitted a copy of it.

24 **Q.** So you were able to find it.

25 **A.** That's right. The marketing team -- strike -- marketing

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1 office was able to locate that.

2 **MR. EDELMAN:** First let me offer 357 into evidence,
3 Your Honor.

4 **THE COURT:** Any objection?

5 **MS. SWEENEY:** No, Your Honor.

6 **THE COURT:** It's admitted.

7 (Trial Exhibit 357 received in evidence)

8 **BY MR. EDELMAN:**

9 **Q.** Let's turn 2005 packet Exhibit 644. What is Exhibit 644?

10 **A.** This is the request for approval package for the 2005
11 occasion.

12 **Q.** Okay.

13 **MR. EDELMAN:** Offer 644, Your Honor.

14 **THE COURT:** Any objection?

15 **MS. SWEENEY:** No.

16 **THE COURT:** It's admitted.

17 (Trial Exhibit 644 received in evidence)

18 **MR. EDELMAN:** All right. Thank you, Mr. Ku, I have no
19 further questions, at this time.

20 **CROSS-EXAMINATION**

21 **BY MS. SWEENEY:**

22 **Q.** Good afternoon, Mr. Ku.

23 **A.** Good afternoon.

24 **Q.** We met recently, almost two weeks ago when I took your
25 deposition in the late afternoon, isn't that right?

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1 **A.** Yes, that is correct.

2 **Q.** I'd like to start with Trial Exhibit 1029, which is a
3 stipulation entered into by the parties.

4 **MR. EDELMAN:** Objection, Your Honor. Objection.

5 **THE COURT:** Objection on the basis of -- do you want
6 me to --

7 **MR. EDELMAN:** The stipulation was to, I understood,
8 avoid this.

9 **MR. DOSKER:** Your Honor, counsel said "parties." And
10 that's not accurate.

11 **THE COURT:** Let's go to the side for just a moment.

12 (The following proceedings were heard at the sidebar:)

13 **THE COURT:** I understand Mr. Dosker's objection.

14 **MS. SWEENEY:** I do, too. I'm sorry.

15 **THE COURT:** So what's --

16 **MR. EDELMAN:** My objection, Your Honor, is that my
17 understanding was the purpose of the stipulation was to avoid
18 spending time getting into the discovery situation and just
19 have this agreement which you were going to read to the jury.

20 **THE COURT:** Well, I did think that I was going to read
21 this to the jury. Is there some reason that you needed to --

22 **MS. SWEENEY:** I guess that wasn't our understanding.
23 We thought we were going to read it to the jury during or just
24 before Mr. Ku's testimony on cross-examination.

25 **THE COURT:** Okay. Well, it has more force when it

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1 comes from the judge, so I'll read it.

2 (End of sidebar.)

3 **THE COURT:** So ladies and gentlemen at some time when
4 you were not here the parties entered into a stipulation. Some
5 of the parties entered into a stipulation. And here's the
6 stipulation:

7 The Ottogi defendants and the plaintiffs stipulate that
8 the Court ordered the parties to provide each other with
9 relevant documents by April 29, 2016. Ottogi Korea did not
10 provide the documents that have been marked as Trial Exhibits
11 1027 and 1028 until November 12, 2018, at 8:22 p.m.

12 All right. Please go ahead, Ms. Sweeney.

13 **MS. SWEENEY:** Thank you, Your Honor.

14 **BY MS. SWEENEY:**

15 **Q.** Mr. Ku, Ottogi's attorney asked you a number of questions
16 about documents that you submitted to the KFTC. And I'd like
17 to turn your attention to Trial Exhibit 17, which I believe is
18 in the binder that Mr. Edelman provided for you.

19 And looking at the first page of Trial Exhibit 17, is that
20 your email at the top? Sky@ottogi.co.kr?

21 **A.** Yes, that is correct.

22 **Q.** Okay. And this is an email that you sent shortly after
23 the KFTC visited the premises of Ottogi on June 3, 2008,
24 correct?

25 **A.** Yes, that's correct.

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1 Q. Okay. And this email and the attachments pertain to
2 materials that you were tasked with obtaining. And I just want
3 to draw your attention to the subject line at the top of the
4 first page of Exhibit 17.

5 Do you see that, Mr. Ku?

6 A. Yes.

7 Q. And there was a meeting that was organized by your
8 supervisor, Young-Hyun Doh, regarding discussion re preparation
9 of materials requested by KFTC re ramen price fixing. Correct?

10 A. I see it.

11 Q. Okay. And so you knew as of the date of this email --
12 that is, July 2, 2008 -- that the KFTC was investigating price
13 fixing in the ramen industry, correct?

14 A. Yes. I was aware of the fact that they were conducting an
15 investigation concerning ramen.

16 Q. A price fixing investigation, isn't that right?

17 A. My understanding was it wasn't limited to price fixing,
18 but concerns all of the fair trade regulations.

19 Q. But it included price fixing, correct?

20 A. Yes. It is my understanding price fixing or collusion is
21 included under the broad umbrella of the Fair Trade Act
22 regulations.

23 Q. So that was your understanding as you prepared to gather
24 the materials that you ultimately submitted to the KFTC,
25 correct?

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1 **A.** Yes. That's right.

2 **Q.** Okay. And then if you could look about three quarters of
3 the way down this first page of Exhibit 17. It says -- there's
4 a couple of sentences, and the last one has a parenthetical.
5 It says: The chairman personally inquired about the status of
6 this matter yesterday.

7 Do you see that?

8 **A.** Yes, I see it.

9 **Q.** Okay. And at that time -- this is July of 2008 -- who was
10 the chairman?

11 **A.** This may or may not be exact, but I think the present
12 chairman was the chairman back then as well.

13 **Q.** And what's the name?

14 **A.** Young-Joon Ham.

15 **Q.** Then turning to the third page of this document, which has
16 a header reading the Fair Trade Commission. You received this,
17 correct?

18 **A.** Yes. That's correct.

19 **Q.** Okay. And the top of it says: For the reference of
20 recipients Nongshim Company, Limited; Samyang Foods Company,
21 Limited; Ottogi Company, Limited; and Yakult Korea.

22 Implemented by: Service cartel department.

23 Do you see that?

24 **A.** Yes, I see it.

25 **Q.** And at that time in 2008 Nongshim, Samyang and Yakult

1 Korea were all competitors of Ottogi's, correct?

2 **A.** Yes, that's correct.

3 **Q.** And those companies were Ottogi's competitors throughout
4 the time period 2001 through 2008, correct?

5 **A.** That was the case as far as the ramen segment is
6 concerned. And if we're talking about the early part of 2000
7 there was yet another company back then.

8 **Q.** Okay. And then sticking with that same page that starts
9 out the Fair Trade Commission at the top. Looking at the
10 fourth numbered paragraph there. It says: For your
11 information, in the event that materials are not submitted or
12 false materials are submitted, your company could be subject to
13 penalties. Do you see that?

14 **A.** Yes, I see it.

15 **Q.** And then let's go to the next page which is -- as I
16 understand it, this is the list that was ultimately -- the list
17 that was sent to Ottogi from the KFTC with your inserts as to
18 which department was responsible for which items. Is that
19 correct?

20 **A.** That's right. I was the one who provided these answers to
21 their inquiry, as such.

22 **Q.** And the bolded portions below each numbered paragraph,
23 that's your determination as to which department within Ottogi
24 should respond, is that correct?

25 **A.** So by making that indication I did not mean to say that it

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1 was those respective departments that would be able to answer
2 those inquiries, but rather it seems that the material would be
3 available through those respective departments.

4 Q. Okay. And you yourself were responsible, at least in
5 part, for responding to items numbers 4 and 5, correct?

6 A. Yes, that's correct.

7 Q. And number 4 is your company's determination structure and
8 method regarding the price of ramen, particularly the process
9 and method of determining price as to such time as when a price
10 increase of ramen is implemented, contents of review by the
11 relevant departments.

12 So when you started gathering materials in response to the
13 KFTC's request, you understood that the KFTC was interested in
14 the contents of review by the relevant departments that went
15 along with a request for a price increase, correct?

16 A. So concerning this passage at that time, it was not
17 entirely clear to me what precisely the folks were interested
18 in getting from us. So I placed a phone call to them and I
19 said, There is this gist here. So what exactly are you looking
20 for? And they said, Okay, simply submit that final report as
21 we discussed previously. The request for approval package.

22 Q. Isn't it true, Mr. Ku, that the KFTC was interested in
23 knowing the reasons for Ottogi's ramen price increases during
24 the period 2001 through 2010?

25 A. Yes, but be that as it may, that's something that's

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1 entailed within the final reports.

2 **Q.** Can you -- I'd like to have you take a look Exhibit 368,
3 which is in evidence.

4 **MS. SWEENEY:** I'll need a copy for the witness.

5 (Whereupon document was tendered to counsel.)

6 **MS. SWEENEY:** May I approach, Your Honor?

7 **THE COURT:** You may.

8 (Whereupon document was tendered to the witness.)

9 **BY MS. SWEENEY**

10 **Q.** Okay. Exhibit 368 is an email to you dated July 3rd,
11 2008, with an attachment. Now, who did you receive that email
12 from?

13 **A.** This is an email that I received from one of my
14 subordinates, Mr. Ho-Joon Kang.

15 **Q.** Okay. And then -- I'm not going to spend any time with
16 this document. I'm trying to establish the timeline.

17 After you received this document from your subordinate,
18 what did you do with it?

19 **A.** So after receiving this document, I made some partial
20 revision on this document.

21 **Q.** Did you make the revisions yourself, Mr. Ku?

22 **A.** Yes, I made the revisions.

23 **Q.** Do you remember when you gave a deposition about two weeks
24 ago?

25 **A.** Yes, I do.

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1 Q. Didn't you testify then that most of the revisions to this
2 document were made by someone else?

3 A. So perhaps I misunderstood your former question just now.
4 I thought you had asked as to what kind of action I took after
5 receiving this document. Did I misunderstand you?

6 Q. Perhaps you were confused about which document you were
7 looking at, Mr. Ku.

8 So there is a timeline. You received a version of the
9 2004 memo from Jae-Hwan Jong; do you remember that?

10 A. Yes, that's correct.

11 Q. Okay. And then you forwarded that document from 2004 to
12 your subordinate; correct?

13 And this is a different exhibit. I think it's the one
14 that Mr. Edelman showed you, Exhibit 359. You forwarded that
15 to your subordinate and asked him to make revisions to it; is
16 that correct?

17 A. Yes, that's correct.

18 Q. Okay. And so I believe you have in front of you, perhaps
19 in your binder, Exhibit 359, which has already been admitted
20 into evidence. If you do, can you please turn to that?

21 (Witness complied.)

22 A. Yes. I'm looking at it.

23 Q. Okay. And this is the document which you referred to in
24 your testimony earlier today as the interim memo for 2004; is
25 that right?

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1 **A.** Yes. The document that Mr. Jae-Hwan Jong sent over to me
2 was an interim report.

3 **Q.** Okay. And at your instruction -- and I'm sorry, I have
4 forgotten how to say his name -- your subordinate modified
5 Exhibit 359; correct?

6 **A.** Yes, that's correct.

7 **Q.** Okay. And this was also done in consultation with your
8 supervisor, Mr. Young-Hyun Doh; correct?

9 **A.** Yes, that's correct.

10 **Q.** And your deadline for submitting these materials to the
11 KFTC was July 6, 2008; correct?

12 **A.** Yes, that's correct.

13 **Q.** Okay. And then you received a revised version of
14 Exhibit 359 back from your subordinate. Is his name Mr. Kang?
15 Is it Ho-Joon Kang?

16 **A.** Yes, that's correct.

17 **Q.** Okay. And I'd like you to have a look at that document;
18 that is, the revised version of the 2004 memo, which I believe
19 is also in your binder as Exhibit 365?

20 **A.** All right. I looked at it.

21 **Q.** Okay. And I'd like to compare these.

22 **MS. SWEENEY:** So, Jason, if you could put the front --
23 those two documents side-by-side, that would be great?

24 (Document displayed)

25

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1 **BY MS. SWEENEY**

2 **Q.** And let's start by focusing on the date and title in the
3 right-hand corner.

4 (Document displayed)

5 **MS. SWEENEY:** My fault. Second page, thank you.

6 (Document displayed)

7 **BY MR. SWEENEY**

8 **Q.** Do you see where it says 2004.01.05.

9 **A.** Yes, I see it.

10 **Q.** Okay. Now, if you compare these two documents, the
11 material in the upper right-hand corner is identical; isn't
12 that right?

13 **A.** Yes, that's right.

14 **Q.** Okay. And both are dated January 5th, 2004; correct?

15 **A.** Yes, that's correct.

16 **Q.** And both say "Marketing Team 3"?

17 **A.** Yes, that's correct.

18 **Q.** And both say Kang-Hoon Lee?

19 **A.** Yes, that's correct.

20 **Q.** And the title is the same; right? Both say "Review of
21 Ramen Price Increase Proposal"?

22 **A.** Yes, that's correct.

23 **Q.** But the content of these documents is quite different,
24 isn't it?

25 **A.** They are different; right.

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1 Q. Okay. And let's start with the "Purpose." And you knew
2 when you asked your subordinate Ho-Joon Kang to revise these
3 documents, the KFTC was interested in the reasons for Ottogi's
4 price increases in the years 2001 through 2010, including 2004,
5 correct?

6 A. Was it not through 2008?

7 Q. Pardon me, 2008.

8 A. Right, through 2008.

9 Q. Okay. You also knew at the time that you gave the
10 instructions to modify the document in this manner, that
11 Nongshim and Samyang and Yakult were also being investigated,
12 along with Ottogi, for price fixing in the ramen market;
13 correct?

14 A. So my understanding at this point in time was that the
15 investigation had to do with the overall Fair Trade Act
16 regulations.

17 Q. Including price fixing; correct?

18 A. Right.

19 Q. Okay. And so you had your subordinate change the
20 "Purpose" to remove the language that says "a price increase is
21 inevitable on account of Nongshim's price increase" and
22 substitute instead language about a "rise in the cost of raw
23 and subsidiary materials"; right?

24 A. No. I did not give any instructions to change the
25 language as such. What I instructed Ho-Joon Kang to do was to

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1 look at the final reports of 2007 and 2008 and come up with
2 something similar; and that the numbers here also seem to be
3 off, so make sure that you come up with the right numbers.
4 That's what I instructed him to do.

5 **Q.** Well, let's start with your instruction that he look at
6 those other years' memos. Don't you think that the KFTC wanted
7 to know the reasons for Ottogi's price increase in 2004, as
8 opposed to those other years?

9 **A.** Well, there was a price increase as to the cost of raw
10 materials, even in 2004.

11 **Q.** And that wasn't in the -- in the original version of the
12 memo in 2004, in the "Purpose" section of that memo; was it?

13 **A.** Ma'am, so as for this "Purpose" section here, I don't know
14 how the English translation goes, but the way the Korean
15 original reads to me, it's rather ambiguous.

16 **MR. SWEENEY:** I'm going to ask the court reporter to
17 read my question back. Perhaps, Mr. Ku, you didn't understand
18 it.

19 (Record read as requested.)

20 **MR. EDELMAN:** Your Honor, I object on the grounds that
21 the response the witness gave was responsive.

22 **THE COURT:** Overruled.

23 **A.** It is not there, no. However, when I look at the
24 "Purpose" as indicated here, I think it is somewhat problematic
25 in terms of the content, because it doesn't comport with the

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1 content that follows in the back pages. For instance, it says
2 here, let's raise it. Whereas, in the back page it says, let
3 us not raise it.

4 So I think my take is that he, when looking at this, also
5 figured that there is something problematic about this.

6 **Q.** Now, other changes that you instructed your subordinate to
7 make include removing all references to Ottogi's competitors;
8 correct?

9 **A.** I never gave any instructions to that effect.

10 **Q.** Okay. Well, I will represent to you, Mr. Ku -- if you had
11 time, I would ask you to count them, but I will represent to
12 you that in Exhibit 359, which is your original version of the
13 2004 memo, there were 20, 20 references to Nongshim. There
14 were two references to Paldo or Yakult. And there were two
15 references to Samyang.

16 Now, are there any references to Nongshim, Paldo or
17 Samyang in the revised version of this document?

18 **A.** Well, so the newly revised version, I can see that there
19 is no such reference whatsoever. I can easily discern that.

20 But the -- what number was this? In that other version, I
21 don't -- I don't know if those references appear that many
22 times, but I see that they are there a few times. But as we've
23 already seen, it is common, it is typical for these sorts of
24 references as to the competition to appear in an interim
25 report, as was the case in yet another interim report. In

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1 fact, that other interim report that I have in mind, in fact,
2 was under the title of the anticipated reactions or whatever
3 post the increase by Nongshim.

4 And just for your information, the reference material I
5 provided my subordinate, Mr. Ho-Joon Kang were the ones
6 pertaining to '07 and '08. And when you look at that, and this
7 is as we discussed previously, it does talk about the timing of
8 the increase and the actual gist of the increase, but it makes
9 no reference to the competition. And the reason for that is
10 because the final decision-making authority does not want to
11 see such kinds of details.

12 **MS. SWEENEY:** I move to strike everything starting
13 with the word "but" and request that the witness answer my
14 questions.

15 **THE COURT:** I will move to strike the second
16 two-thirds of the answer starting with "but."

17 And, Mr. Ku, if you could please just answer the question
18 that you're being asked, please.

19 **THE WITNESS:** Okay.

20 **BY MS. SWEENEY**

21 **Q.** Another difference between these two memoranda, if you
22 look, Mr. Ku, at the third page of Exhibit 359, there is a
23 chart called "Price Comparison Between Competing Products
24 (after the price adjustment)."

25 **A.** Yes, I see it.

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1 **Q.** Now, that chart, which compares the prices by product of
2 Ottogi's prices and Nongshim's prices, including the percentage
3 price increase, that chart does not appear in the revised
4 version, which is Exhibit 365; correct?

5 **A.** Right. To date, no final report has ever included a chart
6 comparing things against the competition.

7 **MR. SWEENEY:** And, again, I move to strike everything
8 after the word "right."

9 **THE COURT:** Correct. So sustained.

10 Mr. Ku, Mr. Edelman can ask you more questions after this,
11 but for now just answer the question you're being asked.

12 **THE WITNESS:** Understood.

13 **BY MS. SWEENEY**

14 **Q.** Okay. So Exhibit 365, which you received from your
15 subordinate at about 9:08 in the morning, what did you do after
16 you received that?

17 **A.** So I reviewed the contents here and I think I revised the
18 name of Kang-Hoon Lee to Jae-Hwan Jong.

19 **Q.** And what else did you do?

20 **A.** Save for that, there is no further revision that I made on
21 the soft file of this document.

22 **Q.** Okay. So you're referring to the electronic version,
23 which has not yet been introduced into evidence, but I may as
24 well introduce it now.

25 **MS. SWEENEY:** And that would be Trial Exhibit 1027.

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1 If I could have copies of those, please?

2 (Whereupon document was tendered to counsel.)

3 **MS. SWEENEY:** May I approach, Your Honor?

4 **THE COURT:** You may.

5 (Whereupon document was tendered to the witness.)

6 **BY MS. SWEENEY**

7 **Q.** Is Exhibit 1027 a version of the 2004 memo that was in
8 your computer?

9 **A.** Yes, that's correct.

10 **Q.** And if you look at the last page, it's metadata showing
11 that it was last modified by you?

12 **A.** Yes, that's correct.

13 **Q.** Okay. And this document was in your computer from its
14 creation date in 2008 up at least until 2016 or '17; correct?

15 **A.** Yes, that's correct.

16 **Q.** Okay. And you understand that it was not produced to the
17 plaintiffs in this case until November 12?

18 **A.** Ma'am, my understanding as to myself is that I have no
19 personal obligation to submit documents or anything. My
20 computer was submitted to the collecting company.

21 **Q.** Okay. Let's turn back to 976.

22 (Document displayed)

23 **A.** All right.

24 **Q.** Okay. You have that in front of you?

25 **A.** Yes, I'm there.

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1 Q. Okay. And 976 is the final version of the 2004 memo which
2 you sent to the KFTC; is that correct?

3 A. Yes. My recollection is that this is what I sent to them.

4 Q. Okay. And this document has all the content changes that
5 we talked about. For example, with respect to the "Purpose;"
6 correct?

7 A. Yes.

8 Q. And this document also has the change with respect to the
9 removal of the competitors' names; correct?

10 A. That is right. There is no reference as to the
11 competition.

12 Q. Okay. And another difference between this version of the
13 2004 memo and the original one is that you changed the name to
14 Jae-Hwan Jong; correct?

15 A. Yes, that is right.

16 Q. And then you had Mr. Jong put his chop on this document;
17 right?

18 A. Yes. He, himself, placed his chop mark on it, deeming
19 this to be similar to that which he had created in the past
20 after reviewing it.

21 Q. But he wasn't the one who created the original document;
22 was he?

23 A. Well, it wasn't Kang-Hoon Lee. And he, himself, wasn't
24 sure if he had or hadn't made it back then himself.

25 Q. Now, you changed the name because Kang-Hoon Lee had left

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1 the company by 2008; correct?

2 **A.** No.

3 **Q.** You remember you were deposed about a little less than two
4 weeks ago in this case. Do you remember testifying then that
5 you changed the name because Mr. Lee had left or was about to
6 leave the company and because you thought that Mr. Lee was too
7 junior to be putting his name and chop on such a document?

8 **A.** So I don't know how the interpretation to your former
9 question just went, but the way it sounded to me, and the way I
10 remember it, was did you not change this in 2008 because he had
11 left the company? And so I said no.

12 **Q.** Well, let me ask you this: In 2008 was Kang-Hoon Lee
13 employed by Ottogi in Korea?

14 **A.** If we're talking about 2008, that is the time frame when
15 he would have left the company.

16 **Q.** In fact, you testified that he left a couple years before
17 2008; correct?

18 **A.** Indeed. So even sometime prior to 2008 he was already
19 gone. And my point was, when I was testifying, the time frame
20 when the subject final report was or would have been prepared,
21 at that point in time in the past he had already -- it had
22 already been decided that he was going to leave the care of the
23 company. That was my point.

24 **Q.** But he was still at the company on January 5th, 2004;
25 isn't that correct?

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1 **A.** On January 5th he was still working for the company.

2 **Q.** Okay. And after an employee leaves Ottogi, they typically
3 take their chop with them; correct?

4 **A.** Yes, that's correct.

5 **Q.** So in 2008, even if you had wanted to, you couldn't have
6 placed Mr. Lee's chop on the document that you sent to the
7 KFTC; correct?

8 **A.** That's correct.

9 **Q.** Okay. I heard you tell Mr. Edelman earlier today that you
10 were uncomfortable sending this revised version of the 2004
11 memo to the KFTC. Do you recall that?

12 **A.** That is right.

13 **Q.** But when you sent Exhibit 976 to the KFTC, you did not
14 send it along with a letter explaining that this was just your
15 approximation of the memo; correct?

16 **A.** That was explained only over the phone to them and, no, I
17 did not send along such a letter to such effect.

18 **Q.** And you don't remember the name of the person that you
19 supposedly spoke to at the KFTC about this; correct?

20 **A.** It was a male and I am not able to recall his name.

21 **Q.** Okay. And when you sent this to the KFTC, you sent it by
22 post as opposed to email, so there would not have been any
23 metadata in the document; correct?

24 **MR. EDELMAN:** Objection. Compound.

25 **THE COURT:** Yeah. Break it down.

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1 BY MS. SWEENEY

2 Q. You sent Exhibit 976 to the KFTC via post; correct?

3 A. That is so, to my recollection.

4 Q. Okay. And you did not email it to the KFTC; correct?

5 A. The KFTC did not tell me to send it via email.

6 Q. But you did not send it to the KFTC via email; correct?

7 A. That is correct.

8 Q. Okay. And so when the KFTC received this document, they
9 received it in hard copy form without any metadata; correct?

10 A. That is correct.

11 Q. And there is nothing on the face of 976 that indicates
12 that it was created in July of 2008; correct?

13 A. That is the case in terms of the hard copy.

14 Q. And there is nothing in the whole body of Exhibit 976 that
15 indicates that it was created in 2008?

16 A. That is correct.

17 Q. And you didn't indicate on the face of the document, for
18 example in parentheses, that the document was created in 2008?

19 A. That is correct.

20 Q. And you didn't create a memo to the file explaining what
21 you did and why you did -- why you sent this document with a
22 different date to the KFTC; correct?

23 A. That is correct.

24 Q. Okay. Now, one thing you could have done was send both
25 memos, the original 2004 memo and your recreation of it in

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1 2008, you could have done that; right? You could have sent
2 both those memos to the KFTC?

3 **A.** The KFTC had asked only for the final memo.

4 **Q.** But you sent nothing to the KFTC to indicate in any way
5 that this document had been recreated in July of 2008; correct?

6 **A.** There isn't anything in terms of a document that I
7 submitted in that regard, no.

8 **Q.** Okay.

9 **THE COURT:** Ms. Sweeney, is this a good time to break?

10 **MS. SWEENEY:** This is a good time, Your Honor.

11 **THE COURT:** Okay. Ladies and gentlemen, tomorrow is
12 another day. We're in recess now. Please remember the
13 admonitions.

14 Thank you for your attention, your promptness, and we'll
15 look forward to seeing you in the morning.

16 (Jury exits the courtroom at 1:29 p.m.)

17 **THE COURT:** So before I leave you all, I'm interested
18 in where the Defense case is. Who will follow Mr. Ku?

19 **MR. EDELMAN:** Well have Professor Hong, and then we
20 will have Mr. Cox, Dr. Cox. And then we will probably be out
21 of time. So we will be cutting our Witness List at that point.

22 **THE COURT:** Okay. All right. Fine. I do want to --
23 we need to finish the evidence this week. That's very much on
24 my mind.

25 **MR. EDELMAN:** Absolutely.

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1 **THE COURT:** Okay.

2 **MS. SWEENEY:** Your Honor, before we break, can we get
3 the admonition for the witness, including in-house counsel?

4 **THE COURT:** Absolutely. Mr. Ku, while we're on break
5 until tomorrow morning, do not have any discussions with the
6 lawyers.

7 **THE WITNESS:** Understood.

8 **THE COURT:** Or with anybody who wants to talk to you
9 about your testimony.

10 **THE WITNESS:** Understood, Your Honor.

11 **THE COURT:** All right. Thank you.

12 **MS. SWEENEY:** Thank you.

13 **MR. EDELMAN:** Thank you, your Honor.

14 (Whereupon at 1:32 p.m. further proceedings were
15 adjourned December 11, 2018 at 7:30 a.m.)
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CERTIFICATE OF REPORTERS

We certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

V. Eastvold

Vicki Eastvold, RMR, CRR

Debra L. Pas

Debra L. Pas, CSR 11916, CRR, RMR, RPR

Monday, December 10, 2018